HINDU LAW OF BANGLADESH

A Comprehensive Jurisprudential Treatise

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Hindu Law of Bangladesh: A Comprehensive Jurisprudential Treatise

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Preface

This massive sixteen-part legal treatise examines the state of Hindu personal law in Bangladesh, arguing that it has remained frozen in time since the colonial period, creating a human rights emergency for the country's approximately thirteen million Hindu citizens (roughly 8% of the population). The work is both a scholarly analysis and a reform manifesto, providing intellectual architecture for comprehensive legal reform.

The author's central claim is that Bangladesh's Hindu personal law-derived from ancient Sanskrit texts, colonial judicial decisions, and minimal statutory modifications has not been meaningfully reformed since independence in 1971. This stagnation affects marriage, divorce, inheritance, adoption, maintenance, and guardianship, leaving Hindu women particularly vulnerable to systematic discrimination.

Part One: Philosophical Foundations and Historical Context

The Problem Defined

The treatise opens by framing Hindu law as operating on three interconnected levels:

Philosophical-theological: A system expressing Dharma (cosmic order)

Historical-colonial: A colonial construction shaped by British administrators

Constitutional-contemporary: An issue of state-minority relations

The author emphasizes that Bangladesh's Hindu law is frozen while India reformed comprehensively through the Hindu Code Bills (1955-56) and Nepal through its National Civil Code (2017). The only significant Bangladeshi legislation has been the Hindu Marriage Registration Act of 2012, which made registration voluntary and thus largely ineffective.

Dharma as Conceptual Core

The treatise provides an extensive analysis of Dharma as a dynamic concept that varies with time (kala), place (desa), and circumstance (avastha). This dynamism provides internal resources for reform often overlooked by those who treat Hindu law as essentially immutable.

The hierarchy of legal sources includes:

Shruti (Vedas) - highest but least specific

Smriti (Manusmriti, Yajnavalkyasmriti, etc.) - primary substantive rules

Nibandha (digest literature) - regional commentaries giving rise to schools

Custom (achar/sadachara) - recognized local practices

Legislation - the source Bangladesh has failed to deploy

The Dayabhaga School

The Dayabhaga school (from Jimutavahana's 12th-century treatise) governs Hindu Bengalis and differs fundamentally from the Mitakshara school prevailing elsewhere in India. Its distinctive features include:

Spiritual benefit principle: Inheritance rights depend on capacity to offer pinda (rice-balls) for deceased ancestors

No birth-right: Property rights arise at succession, not birth

Stronger widow position: Widows take husband's share even in undivided families

Limited female estate: Women inherit only life interests, not absolute ownership

The treatise carefully explains how this system, while more favorable to widows than Mitakshara in some respects, remains deeply inadequate by modern standards.

Colonial Construction

A crucial argument is that Bangladesh's Hindu law is not "traditional" but a colonial construct shaped by:

British administrative needs (the Bengal Regulation of 1772)

Orientalist scholarship (Colebrooke's translations)

Selective privileging of certain texts and interpretations

The "freezing" of dynamic pre-colonial legal practices

The Privy Council's text-bound approach (Collector of Madura v. Mootoo Ramalinga Sathupathi, 1868) made Hindu law uniquely resistant to evolutionary judicial development.

Part Two: Hindu Marriage Law

The Sacrament vs. Contract Debate

The treatise extensively analyzes whether Hindu marriage is a sacrament (indissoluble) or contract (dissoluble), concluding it is a hybrid. The classical tradition recognized eight forms of marriage, including the Gandharva form (mutual consent), and texts like the Narada and Parasara Smritis recognized circumstances for remarriage.

The colonial courts constructed indissolubility as a principle, but this was a pragmatic judicial choice rather than authentic tradition. The Indian Supreme Court's 2025 Dolly Rani decision reaffirmed ceremonial requirements while operating within a statutory framework that includes divorce.

Current Deficiencies

The existing law in Bangladesh provides:

No divorce for Hindus whatsoever

Voluntary registration only (2012 Act)

Caste restrictions on marriage

Inadequate consent protections

No explicit polygamy prohibition

Proposed Reforms

The treatise proposes:

Mandatory registration with accessible procedures

Statutory divorce grounds (fault-based and no-fault)

Abolition of caste restrictions

Minimum age requirements (18 for both parties)

Free consent as condition of validity

Polygamy prohibition

The Indian Hindu Marriage Act of 1955 serves as the primary model.

Part Three: Inheritance and Succession Law

The Dayabhaga Inheritance System

The treatise provides the most detailed analysis of Dayabhaga succession available in the literature. Key features include:

Order of heirs: Sons rank first (spiritual benefit), followed by grandsons, then five female Sapindas (widow, daughter, mother, paternal grandmother, great-paternal grandmother).

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The widow's estate: The most criticized feature. Widows inherit only limited life interests, cannot alienate property (except for legal necessity), and property reverts to reversioners (male heirs) upon death.

Daughter's position: Daughters inherit only in complete absence of male descendants, and even then as limited estate holders. A daughter who is barren may be excluded entirely.

Stridhana: The one domain where women hold absolute property: gifts received at marriage, inheritance from mother, etc. The Shishubar Dhali case (2023) confirmed daughters inherit mother's Stridhana absolutely.

The Hindu Women's Rights to Property Act 1937

This colonial statute extended widows' rights but preserved the limited estate concept. Crucially, it explicitly excludes agricultural land from its scope, devastating in rural Bangladesh where land is primary wealth.

Proposed Reforms

The treatise proposes a comprehensive Hindu Succession Act for Bangladesh providing:

Abolition of limited estate - all heirs take absolute ownership

Equal inheritance for daughters - same as sons

Equal shares for widows - not subordinate to sons

Abolition of unchastity exclusion

Extension to agricultural land

Clear succession hierarchy modeled on Indian 1956 Act

Part Four: Adoption Law

The Dattaka System

Hindu adoption law is philosophically revealing because it exposes the theological foundations most nakedly. Key features:

Only males can be adopted (to perform funeral rites)

Only men can adopt (women need husband's authorization)

Caste restrictions apply

Orphans cannot be adopted (no one to give them)

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Dattahoma ceremony required (Vedic fire oblation)

Proposed Reforms

Drawing on India's Hindu Adoptions and Maintenance Act 1956:

Allow adoption of girls

Equal adoption rights for women (married, widowed, or single)

Abolish caste restrictions

Allow adoption of orphans with court permission

Simplify ceremonial requirements

Best interests of child as paramount principle

Part Five: Guardianship Law

Current Framework

Under the Dayabhaga system as received:

Father is natural guardian with primary authority

Mother's guardianship is derivative (activates only on father's death/incapacity)

Testamentary guardians appointed by father can override mother

Karta (family manager) exercises practical authority over minors

The Guardians and Wards Act 1890 provides court-appointed guardianship but defers to personal law on natural guardians.

Constitutional Challenges

The treatise argues this system violates:

Article 27 (equality before law)

Article 28 (non-discrimination on sex grounds)

CEDAW Article 16 (equal parental rights)

Proposed Reforms

Equal natural guardianship for both parents

Welfare of child as paramount consideration

Child's voice in proceedings (CRC Article 12)

Guardian ad litem for independent child representation

Strengthened accountability for property management

Part Six: Hindu Religious Institutions and Temple Properties

The Crisis

The treatise documents systematic attacks on Hindu religious institutions, particularly following the August 2024 political upheaval:

2,244 incidents of violence against minorities (Aug 4, 2024 - June 30, 2025)

59 attacks on places of worship (first half of 2025 alone)

60 acts of idol vandalism (Jan-Sept 2025)

522 incidents of communal violence in 2025, including 95 attacks on places of worship

The Khilgaon temple demolition (June 2025) is analyzed as a case study in state action against Hindu religious institutions.

Legal Framework Deficiencies

Unlike Muslim Waqf institutions (governed by Waqf Ordinance 1962), Hindu religious institutions lack:

Registration system

Administrative oversight body

Specialized dispute resolution

Property protection mechanisms

The Enemy Property/Vested Property Acts

A crucial historical analysis shows how these laws (1965-1974) enabled systematic dispossession of Hindu-owned property, including temple lands. Approximately 1.64 million acres of agricultural land were lost, affecting 748,850 Hindu families.

Proposed Hindu Religious Institutions and Endowments Act

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The treatise proposes a comprehensive framework including:

Hindu Religious Institutions Board for administration

Mandatory registration of all temples and endowments

Deity's legal personality confirmed for property ownership

Managing committees with legal capacity

Women's representation (minimum 33%)

Specialized dispute resolution

Criminal penalties for misappropriation

Part Seven: Caste Discrimination

The Caste System in Hindu Personal Law

The treatise examines how caste hierarchy is embedded in formal legal rules:

Marriage: Caste compatibility required for validity

Adoption: Child must be same caste as adopting parent

Religious practice: Dalits excluded from temples and rituals

Inheritance: Indirect discrimination through property access

Dalit Hindus in Bangladesh

The Dalit population is estimated at 5-6 million (3-4% of total). Communities include Namasudra, Dom, Hori/Harijan, and Rishi. They face:

Extreme poverty and occupational confinement to sanitation work

Double marginalization (as Hindus in Muslim-majority state, as Dalits within Hindu community)

Climate vulnerability (coastal districts, lacking basic water connections)

Legal Framework Gaps

The Bangladesh Constitution prohibits caste discrimination (Article 28), but:

State action requirement limits application to private discrimination

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No enforcement mechanisms exist

Anti-discrimination bill (pending since 2022) not enacted

No disaggregated data collected by caste

Comparative Framework

The treatise examines India's:

Protection of Civil Rights Act 1955 (criminalizes untouchability)

Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act 1989 (stronger penalties)

Reservation system (affirmative action in education/employment)

Proposed Reforms

Remove caste restrictions from marriage and adoption

Enact anti-discrimination legislation covering private actors

Collect caste-disaggregated data

Affirmative measures for Dalit communities (education, employment, housing)

Reform religious institution governance to include Dalits

Part Eight: Maintenance Law

Current Framework

The primary statute is the **Hindu Married Women's Right to Separate Residence and Maintenance Act 1946**, which provides:

Grounds for separate residence:

Husband's loathsome disease

Cruelty

Desertion

Husband's second wife/concubine

Husband's conversion from Hinduism

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Any other reasonable cause

Disqualifications (Section 3):

Wife's unchastity

Wife's conversion from Hinduism

Inadequacies

The 1946 Act provides **separation, not divorce**. Women remain legally married, cannot remarry, and have limited economic remedies. Maintenance for widows, children, and parents is governed by uncodified case law.

Proposed Hindu Maintenance and Economic Security Act

The treatise proposes:

Unconditional maintenance right during marriage

Adequate quantum guidelines (drawing on Indian Supreme Court's 2024-25 jurisprudence)

Gender-neutral obligations (husband and wife equally)

Children's maintenance until majority/education completion

Widow's maintenance not forfeited by remarriage

Effective enforcement mechanisms (income withholding, asset attachment)

Part Nine: The Vested Property Regime

Historical Origins

The Enemy Property Act 1965 (Pakistan) classified property of persons with Indian connections as "enemy property." After Bangladesh's independence, this became the **Vested Property Act 1974**, systematically dispossessing Hindu landowners.

Scale of Dispossession

Professor Abul Barkat's research documented:

748,850 Hindu families directly affected

1.64 million acres of agricultural land lost (53% of Hindu-owned land)

6 million individuals evicted

Primary cause of Hindu emigration from 30% to 8% of population

Political Economy

Beneficiaries cut across party lines (Awami League, BNP, Jatiya Party), creating a self-sustaining coalition opposed to restoration. The 1976 amendment converted state from custodian to owner, extinguishing residual claims.

The Vested Property Return Act 2001 and Failures

The 2001 Act promised restoration but:

180-day deadline for return list was removed by BNP government

Documentation requirements impossible for dispossessed families

Bona fide purchaser protection excluded most properties

Implementation has been a near-total failure

Proposed Hindu Property Security and Restitution Act

Restitution Authority with independent powers

Restoration as primary remedy

Fair compensation at current market value where restoration impossible

Gender sensitivity (women's claims not defeated by personal law limitations)

Non-recurrence provisions (repeal of Vested Property Acts)

Part Ten: Constitutional Framework and July Charter

Constitutional Provisions

The treatise analyzes:

Article 27: Equality before law

Article 28: Non-discrimination (religion, race, caste, sex, place of birth)

Article 28(2): Women's equal rights in all spheres

Article 31: Protection of law

Article 41: Freedom of religion

Article 42: Right to property

The Personal Law Exception

The treatise argues the personal law exception (shielding religious law from constitutional scrutiny) is:

Doctrinally weak (colonial origin)

Constitutionally unjustifiable (state enforces discriminatory rules)

Rejected by comparative jurisprudence (India, South Africa, Nepal)

July Charter 2025 and February 2026 Referendum

The July Charter (endorsed by 61% of voters) provides:

Expanded fundamental rights

Recognition of Bangladesh as nation of multiple ethnicities, religions, languages, cultures

Commitment to minority dignity

Constitutional mandate for reform within 180 days

Transformative Constitutionalism

The treatise applies Karl Klare's theory, arguing the Constitution requires **affirmative state action** to reform discriminatory personal law, not merely negative non-discrimination.

Part Eleven: Legislative History (1971-2026)

Missed Opportunities

The treatise traces failed reform attempts:

1972-1975: Post-independence opportunity not seized

1975-1990: Military rule and Islamization (Fifth Amendment 1979, Eighth Amendment 1988)

1990-2001: Democratic transition, civil society advocacy develops

2000-2010: Law Commission's proposed Hindu Code Bill (2006) fails

2009-2024: Awami League's 15 years in power with massive majorities enacts only voluntary registration (2012 Act)

The 2006 Draft Hindu Code Bill

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The Law Commission's comprehensive draft proposed:

Equal inheritance rights for daughters

Abolition of limited estate

Divorce for Hindus

Compulsory marriage registration

Equal adoption rights

It was shelved due to:

Traditionalist opposition within Hindu community

Islamist political opposition

Government's political calculation

The Hindu Marriage Registration Act 2012

The only significant legislation in 53 years:

Voluntary registration only (not mandatory)

No substantive reform of marriage, divorce, inheritance

Limited practical effect (rural women remain unprotected)

Post-August 2024 Developments

The student-led revolution (July-August 2024) created new political context:

Interim government under Muhammad Yunus

Constitutional reform commissions established

Women's Affairs Reform Commission recommended inheritance reform (April 2025)

Islamist mobilization (20,000 Hefazat-e-Islam rally against reforms)

February 2026 elections returned BNP with supermajority

Part Twelve: Proposed Hindu Personal Law Code

Overall Architecture

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The treatise proposes a comprehensive **Hindu Personal Law Code** structured in six parts:

Marriage

Divorce

Maintenance

Adoption

Inheritance and succession

Enforcement and implementation

Marriage Provisions

Minimum age 18 for both parties

Free and informed consent required

Monogamy enforced (polygamy void)

Compulsory registration

Ceremonial requirements preserved (Vivaha Homa, Saptapadi)

Divorce Provisions

Fault-based grounds:

Adultery

Cruelty (physical and mental)

Desertion (2 years)

Conversion from Hinduism

Unsound mind

Communicable disease

Renunciation of world

No-fault grounds:

Mutual consent (12 months separation)

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Irretrievable breakdown (3 years separation)

Economic consequences:

Maintenance during/after divorce

Division of marital property

Child custody based on welfare principle

Inheritance Provisions

Equal shares for all children regardless of sex
Abolition of limited estate - absolute ownership for all heirs
Clear succession hierarchy:

Class I: spouse and children equally

Class II: parents and siblings

Class III: more remote relatives

Testamentary freedom preserved with forced heirship protections
Abolition of unchastity exclusion

Adoption Provisions

Both sons and daughters may be adopted

Equal adoption rights for men and women

No caste restrictions

Orphans may be adopted with court permission

Best interests of child paramount

Maintenance Provisions

Unconditional right during marriage

Maintenance pending divorce

Post-divorce maintenance (transitional or permanent)

Children's maintenance until majority/education completion

Elderly parents' maintenance (sons and daughters equally)

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Implementation Provisions

National Hindu Law Commission for monitoring

Family courts with specialized training

Legal aid for indigent litigants

Legal literacy programs in Bangla

Monitoring and evaluation with gender-disaggregated indicators

Part Thirteen: Constitutional Litigation Strategy

Strategic Framework

The treatise proposes a coordinated litigation campaign:

Phase 1: Inheritance challenges (most straightforward, best precedents)
Phase 2: Marriage and divorce (using Phase 1 precedents)
Phase 3: Codification case (systemic challenge to legislative inaction)

Key Constitutional Arguments

Formal equality: Dayabhaga rules discriminate on sex grounds (Article 28 violation)

Substantive equality: Rules produce systematic disadvantage incompatible with dignity

Positive obligation: State must reform, not merely refrain from discrimination

No personal law exception: Constitution contains no exemption for personal law

Comparative Precedents

India: Vineeta Sharma (2020) - daughters' equal coparcenary rights retrospective

South Africa: Bhe (2004) - customary law primogeniture struck down

Nepal: Supreme Court orders requiring legislative action on personal law

The Shishubar Dhali Precedent

The 2023 Appellate Division decision is analyzed as:

First significant engagement with constitutional equality in Hindu law

Demonstration that Dayabhaga texts support gender equality when properly read

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Template for future litigation strategy

Public Interest Litigation

The treatise advocates PIL using:

Expanded standing rules

Comprehensive petitions challenging entire discriminatory structure

Mandamus orders requiring legislative action within specified period

Part Fourteen: Community Sociology and Internal Politics

Demographic Context

The Hindu population has declined from 30% (1947) to 8% (2022), driven by:

Partition-era migration

Communal violence (particularly 1964, 1971, 2001, 2014, 2024)

Vested Property Act dispossession

Economic discrimination

Caste Structure

Upper castes: Brahmins, Kayasthas, Vaidyas (Bhadralok) - dominate legal profession and community leadership

Intermediate/lower castes: Namasudra, Teli, Saha, Malo - rural, economically marginal

Dalit communities: Namasudra, Dom, Hori/Harijan, Rishi - face double discrimination

Leadership Organizations

Bangladesh Hindu Buddhist Christian Unity Council (BHBCUC) : Primary political voice, male-dominated, cautious on internal reform

Religious institutions: Temple committees, Puja committees, traditionally conservative

Women's organizations: Most consistent reform advocates

Younger generation: More supportive of reform, shaped by digital information

Conservative Arguments Against Reform

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Theological: Dharma prohibits change to discriminatory rules

Social stability: Reform would disrupt community cohesion

Political instrumentalization: Reform used by anti-Hindu actors

Minority vulnerability: Community cannot afford internal division

Responses

Internal textual resources: Dayabhaga supports gender equality when properly read

Kaliyuga adaptation: Tradition itself requires adaptation to current age

False security: Internal discrimination weakens community more than reform would

Decolonization: Current rules are colonial constructions, not authentic tradition

Progressive Forces

Women's organizations: Bangladesh Mahila Parishad, ASK, BLAST

Academic scholars: Dhaka University, BILIA researchers

Younger generation: Educated, connected, assertive about rights

Progressive religious leaders: Vaishnava tradition, ISKCON

Part Fifteen: International and Diaspora Dimensions

International Human Rights Framework

CEDAW obligations:

Articles 2, 15, 16 require equal rights in family law

Bangladesh's reservations do NOT apply to Hindu personal law

CEDAW Committee has repeatedly called for reform

ICCPR obligations:

Article 26 (equality before law)

Article 18 (religious freedom) does not shield discrimination

Human Rights Committee's General Comment 28 applies

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UPR process:

Multiple states have recommended Hindu personal law reform

Bangladesh has accepted recommendations without implementation

The Bangladeshi Hindu Diaspora

Major concentrations:

India (largest, primarily West Bengal)

United Kingdom (London, established, professional)

United States (New York, New Jersey, Texas, California - increasingly active)

Australia (Sydney, Melbourne - smaller but growing)

Canada (Toronto, Vancouver)

Political divisions:

Hindu nationalist wing (VHP, HSS) - focuses on external threats, resists internal reform

Progressive wing (Hindus for Human Rights) - advocates both external protection and internal reform

Mainstream - primarily concerned with family welfare

The India Dimension

India's interest in Bangladeshi Hindus is:

Real (family connections, West Bengal politics, Hindu nationalism)

Instrumentalized (domestic politics, geopolitical leverage)

Complicated (post-August 2024 deterioration of bilateral relations)

Nepal Model

Nepal's National Civil Code 2017:

Unified civil code applicable across religious communities

Equal inheritance rights for daughters and sons

Comprehensive divorce provisions

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Provides alternative model to community-specific reform

Part Sixteen: Synthesis and Final Argument

The Philosophical Case

The treatise's central philosophical claim is that **genuinely Dharmic legal order is incompatible with discriminatory personal law**. The reform is not an attack on Hindu tradition but an act of fidelity to it, recovering what is essential from beneath colonial distortion.

The Constitutional Case

Five converging arguments:

Formal equality: Dayabhaga rules discriminate on sex grounds (Article 28 violation)

Substantive equality: Rules produce systematic disadvantage incompatible with dignity

Positive obligation: State must reform, not merely refrain from discrimination

No personal law exception: Constitution contains no exemption

International obligations: CEDAW, ICCPR require reform

The Political Case

The current moment (2026) presents unusual opportunity:

Post-August 2024 political transformation

Constitutional reform process underway

Women's Affairs Reform Commission endorsed inheritance reform

High Court's 2023 order invited constitutional challenge

International attention unprecedented

Yunus government's reformist orientation

Addressing Conservative Objections

Theological objection (Dharma prohibits change):

Dharma is dynamic, varies with time/place/circumstance

Kaliyuga adaptation principle supports reform

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Colonial rules are not authentic tradition

Stability objection (reform disrupts community):

Current system is not stable (inconsistent, unknown, contested)

Indian experience shows reform strengthens community

Cultural imperialism objection (reform is Western imposition):

Reform demanded from within community (women's organizations, young generation)

Equality values are universal, not Western

Every other Hindu community has accepted these reforms

Minority vulnerability objection (reform threatens security):

Economic vulnerability of women IS community vulnerability

Strongest protection is full legal equality for all members

False security argument

The Reform Agenda Summary

Immediate priorities (most achievable):

Introduce divorce mechanism for Hindus

Make marriage registration mandatory

Abolish limited estate for widows

Medium-term priorities (3-5 years):

Equal inheritance for daughters

Equal guardianship for mothers

Comprehensive codification

Long-term priorities (10+ years):

Social transformation through legal literacy

Judicial training in reformed law

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Community ownership of reform

Final Conclusion

The treatise concludes that comprehensive Hindu personal law reform in Bangladesh is:

Philosophically imperative (demanded by Dharma itself)

Constitutionally obligatory (Articles 27, 28)

Internationally required (CEDAW, ICCPR)

Comparatively proven (India, Nepal models)

Politically achievable (current moment offers unprecedented opportunity)

Humanly urgent (millions of women suffer under current system)

The work ends with the Mahabharata's golden rule: "Do not do to another what you would not wish done to yourself." No man who would not wish to be denied property rights, divorce rights, or guardianship rights should accept a legal system that denies those rights to women. The time for reform is now.

Key Themes Across the Treatise

Colonial construction: The current Hindu law is not authentic tradition but colonial artifact

Constitutional mandate: Articles 27 and 28 require reform; no personal law exception exists

Comparative urgency: Bangladesh is decades behind India and Nepal

Gender centrality: Women are the primary victims of the unreformed system

Interconnection: Personal law, property law, and communal violence are linked

Internal resources: Dayabhaga tradition itself supports reform when properly read

Political economy: Beneficiaries of status quo cut across party lines, creating reform resistance

Transformative constitutionalism: Constitution requires affirmative state action, not mere non-discrimination

Community ownership: Reform must be led by Hindu women, not imposed externally

Human urgency: Behind every legal abstraction are real women suffering real harm

Methodological Approach

The treatise employs:

Doctrinal legal analysis (statutes, cases, texts)

Historical investigation (colonial construction, legislative history)

Comparative law (India, Nepal, South Africa, Malaysia, Mauritius, Fiji)

Constitutional theory (transformative constitutionalism, basic structure)

Jurisprudential philosophy (Dharma, natural law, legal pluralism)

Political economy (beneficiary interests, institutional inertia)

Sociological analysis (caste, class, generation, gender within community)

International human rights law (CEDAW, ICCPR, UPR, special procedures)

Strategic advocacy (litigation strategy, legislative drafting, community organizing)

The work is simultaneously a scholarly treatise, a reform manifesto, a legislative blueprint, a litigation strategy, and a moral argument for justice.

PART ONE

The Architecture of an Ancient System: Philosophical Foundations, Historical Depth, Jurisprudential Identity, and the Crisis of Legal Stagnation in Hindu Law of Bangladesh

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FOREWORD TO THE SERIES

There are legal systems in this world that grow with the societies they govern, systems that breathe and expand, that respond to the demands of justice as those demands evolve through generations of human aspiration. And then there are systems that freeze. They calcify at a particular moment in history, becoming monuments not to justice but to stasis, not to the living needs of people but to the inertia of institutions too cautious, too politically constrained, or too indifferent to act. The Hindu law operative in Bangladesh belongs, with painful clarity, to this second category.

More than fifty-three years have passed since the birth of the People's Republic of Bangladesh in 1971. In those five decades, the country has transformed in nearly every dimension of its national life. It has built a constitution, fought wars of ideology and governance, produced a garment industry that clothes much of the world, weathered cyclones and floods and political

revolutions, and as recently as July and August of 2024, witnessed a remarkable student-led uprising that toppled a government of fifteen years and inaugurated an entirely new phase of national political history. And yet, through all of this transformation, the Hindu personal law applicable to approximately eight percent of its population, some thirteen million citizens, has remained frozen in time. The inheritance laws governing a Hindu widow in Dhaka in the year 2025 are substantially identical to those that governed her great-great-grandmother in Calcutta in the year 1870. The rules concerning marriage, adoption, and property that bear on the life of a Hindu woman in Sylhet or Khulna today descend, largely unmodified, from texts composed in Sanskrit over a thousand years ago, filtered through the interpretive apparatus of British colonial courts that ceased to exist before her grandmother was born.

This is not merely a legal curiosity. It is a human rights emergency. It is an emergency that intersects with the deepest questions of jurisprudential philosophy, constitutional principle, political theory, and comparative law. It is an emergency that demands not merely legislative patch-work but systematic, courageous, philosophically grounded reform of an entire legal domain. This treatise is an attempt to provide the intellectual architecture for precisely that kind of reform.

The work proceeds in sixteen parts. In this first part, we lay the foundations: we examine the philosophical and jurisprudential identity of Hindu law in its deepest dimensions, trace its historical trajectory from the Vedic age through the colonial encounter to the present crisis, investigate the specific nature of the Dayabhaga School that governs Hindu Bengalis and hence Hindu Bangladeshis, situate Hindu law within contemporary legal theory particularly theories of legal pluralism, postcolonial jurisprudence, and transformative constitutionalism, and diagnose with precision the nature and causes of the legal stagnation that has left Bangladesh's Hindu population governed by rules that its closest neighbors reformed half a century ago.

This is a work written in the conviction that law is not merely a technical instrument but an ethical enterprise, that reform is not merely administrative convenience but a moral imperative, and that the people who live under any legal system deserve a system that treats them as full human beings possessed of dignity, equality, and the capacity for self-determination.

CHAPTER ONE: THE QUESTION OF HINDU LAW AND WHY IT MATTERS

1.1 Framing the Problem

It is worth beginning with a question that might seem simple but is in fact deeply complex: what exactly is Hindu law? The answer one gives to this question will determine not merely one's understanding of what is wrong with the current system in Bangladesh, but also what kind of reform is appropriate, what philosophical commitments must guide such reform, and what political strategies might achieve it.

In the most immediate and practical sense, Hindu law in Bangladesh is a body of rules derived primarily from ancient Sanskrit texts, colonial judicial decisions, and a handful of statutory modifications, that governs the personal affairs of citizens who identify as Hindu. These personal affairs include marriage, the dissolution of marriage, inheritance and succession, adoption, maintenance, guardianship, and related matters. In a country whose population is overwhelmingly Muslim and whose formal legal system is descended primarily from Anglo-Mohammedan and British common law traditions, Hindu personal law occupies a distinct and peculiarly isolated corner of the legal landscape. It is separate, it is ancient, it is largely unmodified since the colonial period, and it applies to a minority community whose political vulnerability has historically made the sustained advocacy necessary for reform extremely difficult.

But to understand Hindu law as merely a technical body of rules is to miss something essential. Hindu law is, in the first place, a philosophical and theological system. Its rules are not arbitrary prescriptions but expressions of a particular cosmological vision, a particular understanding of the relationships between human beings, families, communities, the divine order, and the cosmic law that Hindu tradition calls Dharma. To engage with Hindu law seriously is to engage with one of the world's oldest and most sophisticated legal philosophies. And to reform it intelligently is not to destroy that philosophy but to distinguish within it what is essential and durable from what is historically contingent and socially unjust.

In the second place, Hindu law as operative in Bangladesh is not simply the ancient law of the Dharmasastras. It is a colonial construction, a product of the encounter between British imperial administrators and Sanskrit scholars, between the rationalizing ambitions of the East India Company and the diverse, plural, locally variable legal practices of Hindu communities across Bengal. Understanding this colonial dimension is absolutely essential to understanding why Hindu law in Bangladesh takes the form it takes today, why certain features of the ancient system were emphasized over others, why certain schools of interpretation were privileged, and why reform has been so politically complicated.

In the third place, Hindu law in the contemporary Bangladeshi context is an issue of constitutional law, of the relationship between the state and its religious minorities, of the commitments Bangladesh undertook when it signed international human rights instruments, and of the meaning of equality and non-discrimination in a society structured by both religious difference and deep gender inequality.

These three dimensions, the philosophical-theological, the historical-colonial, and the constitutional-contemporary, must all be held in view simultaneously if we are to think clearly about Hindu law reform in Bangladesh. This treatise attempts to do exactly that.

1.2 The Demographics of Hindu Bangladesh

Before proceeding to the philosophical and historical analysis, it is worth establishing the demographic reality that gives urgency to the questions this treatise addresses. According to the Bangladesh Population Census of 2022, approximately 7.95 percent of the total population of

Bangladesh identifies as Hindu. Given a total population of approximately 165 million at the time of that census, this represents roughly thirteen million people. This is not a small number. It is larger than the total population of many independent states. These are citizens of Bangladesh, people who hold Bangladeshi identity cards, who pay Bangladeshi taxes, whose children attend Bangladeshi schools, who contribute to Bangladesh's economy, culture, and civil society. And yet, in the domain of their most intimate personal relations, marriage, family, property, inheritance, they are governed by laws that the state has never modernized, never codified, and never subjected to the kind of sustained legislative attention that the Muslim personal law, however imperfectly, has at least periodically received.

The situation has become more rather than less urgent in recent years. The events of July and August 2024, when the student-led uprising removed the Awami League government of Sheikh Hasina, were followed by a wave of violence against Hindu communities across Bangladesh. The Bangladesh Hindu Buddhist Christian Unity Council reported over two thousand incidents of attack on minorities in the sixteen days between August 4 and August 20, 2024 alone. These attacks included violence against temples, looting and arson of homes and businesses, and multiple killings. In January 2026, the acting general secretary of the same body stated that between August and November 2024, 82 Hindus were killed and 2,673 separate incidents of atrocities were recorded against the Hindu community.

One might ask what this political and communal violence has to do with the reform of Hindu personal law. The connection is both direct and profound. The vulnerability of the Hindu minority in Bangladesh is not merely a function of political circumstance or communal hostility. It is also a function of legal vulnerability. When a Hindu widow is denied the right to inherit her husband's property and must depend on male relatives for her survival, she is not only personally impoverished; she is rendered more vulnerable to displacement, to coercion, to the kind of property grabbing that has historically accompanied communal violence in Bangladesh. When Hindu land rights are insecure because the law governing succession within Hindu families is unclear, uncodified, and interpreted by courts using texts written in a language that most litigants cannot read, the doors to dispossession are opened wider than they need to be. The reform of Hindu personal law is not separable from the broader project of protecting the rights, security, and dignity of the Hindu minority in Bangladesh.

1.3 The Distinctive Crisis of Bangladesh Compared to India and Nepal

No examination of Hindu law in Bangladesh can proceed without constant reference to the comparative context provided by India and Nepal, the two neighboring countries with large Hindu populations and significant traditions of Hindu legal reform. The contrast is stark and demands explanation.

India, in the decade following independence and the adoption of the 1950 Constitution, undertook a comprehensive reform of Hindu personal law through what came to be known as the Hindu Code Bills. After intense debate and fierce resistance from conservative Hindu opinion, the Parliament of India enacted four landmark statutes: the Hindu Marriage Act of 1955, the Hindu Succession Act of 1956, the Hindu Minority and Guardianship Act of 1956, and the

Hindu Adoptions and Maintenance Act of 1956. These four statutes, taken together, transformed Hindu personal law in India from a system governed by ancient texts and colonial judicial interpretation into a modern, codified, largely statutory system. The Hindu Marriage Act abolished polygamy, introduced divorce, eliminated caste restrictions on marriage, and reconceived marriage as a quasi-civil contract rather than purely a religious sacrament. The Hindu Succession Act abolished the principle of limited female inheritance, gave women absolute ownership over inherited property rather than the limited "life interest" that had previously been their lot under the Dayabhaga system, and fundamentally restructured the law of intestate succession. In 2005, further amendments to the Hindu Succession Act granted daughters equal rights with sons in coparcenary property, a reform upheld and given retrospective effect by the Supreme Court of India in the landmark case of Vineeta Sharma v. Rakesh Sharma decided in 2020.

Nepal, similarly, undertook comprehensive reform of its Hindu personal law, culminating most recently in the National Civil Code of 2017, which replaced the previous Muluki Ain and established a largely unified civil code governing personal law matters across different communities, with significant protections for gender equality.

Bangladesh has done neither of these things. Since independence in 1971, the only significant legislative action in the domain of Hindu personal law has been the Hindu Marriage Registration Act of 2012, which permits but does not require the registration of Hindu marriages. The underlying substantive law governing marriage, inheritance, adoption, and maintenance for Hindus in Bangladesh remains, in its essentials, the pre-colonial and colonial-era law that was in place at the time of partition in 1947. Bangladesh is, in effect, still applying the Hindu law of British India while India itself abandoned that law over sixty years ago.

This is the central paradox, the central anomaly, the central injustice that this treatise sets out to examine and address. How did this situation come about? What jurisprudential, historical, political, and institutional factors explain and in some ways excuse, though never fully justify, this extraordinary legislative paralysis? And what path forward does the law, the philosophy, and the practical politics of reform suggest?

CHAPTER TWO: THE PHILOSOPHICAL FOUNDATIONS OF HINDU LAW

2.1 Dharma as the Conceptual Core

Any attempt to understand Hindu law that does not begin with the concept of Dharma will fail. Dharma is not simply a word that can be translated without remainder into an English equivalent. The great Sanskrit scholar P.V. Kane, whose monumental five-volume work "History of Dharmasastra" remains the most comprehensive treatment of ancient Indian legal theory in any language, observed that Dharma is one of those concepts that resists simple definition precisely because it is so fundamental to the entire intellectual architecture of Hindu civilization. Depending on context, Dharma can mean cosmic order, righteousness, duty, law, religious

obligation, virtue, the proper way of living. In the legal context, it is perhaps best understood as the normative order that sustains both the individual and the cosmos, the system of rules and principles that, when followed, maintains the harmonious functioning of the universe, and when violated, produces disorder at every level from the personal to the cosmic.

This understanding of Dharma has profound implications for how we should think about Hindu law as a jurisprudential system. In most Western legal philosophy, particularly in the natural law tradition that runs from Aristotle and Cicero through Aquinas and Grotius to the contemporary natural law jurisprudence of John Finnis and Robert George, law is thought of as deriving its authority from its conformity to some moral standard that exists independently of positive legal enactment. In Hindu legal philosophy, something similar is true, but the grounding is cosmological rather than merely moral or rational. Law has authority not merely because it conforms to human reason or to a divine moral code, but because it expresses and maintains the Dharmic order that is woven into the fabric of reality itself.

This cosmological grounding of law has both conservative and potentially reformist implications. On the one hand, it means that law is understood as connected to something more fundamental than human preference or social convention, which can make it resistant to change: if the rules of inheritance or marriage are expressions of cosmic order, who is a mere human legislator to change them? On the other hand, the concept of Dharma is itself dynamic and contextual. The Dharmasastra tradition explicitly recognizes that Dharma varies with time (kala), place (desa), and circumstance (avastha). What is proper conduct in one age or context may not be so in another. The famous concept of Kaliyuga, the current degenerate age in the Hindu cyclical understanding of time, carries with it the recognition that the application of Dharmic principles must be adapted to the conditions of the age. This dynamism within the Hindu legal philosophy tradition provides internal resources for reform that are often overlooked by those who treat Hindu law as essentially immutable.

2.2 The Sources of Hindu Law: A Jurisprudential Taxonomy

The sources of Hindu law, as recognized by the classical tradition and as received into colonial judicial practice, form a complex hierarchy that requires careful examination. The traditional hierarchy of legal sources in Hindu jurisprudence begins with the Shruti, literally "that which is heard," a term that refers to the Vedas, the four collections of sacred hymns and their associated texts, the Brahmanas, Aranyakas, and Upanishads, that constitute the foundational sacred literature of Hinduism. The Shruti is considered the highest authority in the Hindu normative order, but it is also the most general and the least practically specific in matters of law. One does not find detailed rules of inheritance or marriage in the Rigveda. The Vedas establish the philosophical and theological framework; they do not supply the positive law.

The second and practically more important source is Smriti, literally "that which is remembered," a category that encompasses the great law books of ancient India: the Manusmriti (the Laws of Manu), the Yajnavalkyasmriti, the Naradasmriti, the Parasarasmriti, and several others. The Smritis are the primary sources of substantive Hindu legal rules. They address in considerable practical detail questions of inheritance, succession, marriage, adoption, contract, crime, and

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procedure. The Manusmriti, compiled probably between 200 BCE and 200 CE, is the most famous and most controversial of these texts. It has been celebrated as one of the world's greatest ancient legal codes and condemned, with equal vehemence, as a charter of caste oppression and gender subordination. Both assessments contain truth. The Manusmriti represents a sophisticated attempt to organize a complex society according to principles of hierarchical order that were understood in its time as expressions of cosmic Dharma, but which from the standpoint of modern constitutional principles grounded in equality and non-discrimination are deeply problematic.

The third source of Hindu law is Nibandha or digest literature. The great Nibandhas are compilations and commentaries on the Smritis, written by learned jurists over many centuries, that attempt to resolve the contradictions between different Smritis, to systematize their rules, and to adapt them to local conditions. It is at the level of the Nibandha literature that the regional differentiation of Hindu law becomes most visible. Different regions of India produced different Nibandhas that interpreted the Smriti differently, gave different priority to different texts, and addressed different local customs. It is the Nibandha tradition that gave rise to the major schools of Hindu law, most importantly the Dayabhaga school of Bengal and the Mitakshara school that predominated elsewhere.

The fourth source is custom (achar or sadachara). The Hindu legal tradition has always recognized that local customs, when well-established and consistent with the general principles of Dharma, have the force of law. This recognition of custom as a legal source reflects a sophisticated awareness that the formal textual tradition can never fully capture the diversity of actual social practice, and that law must in some sense accommodate the variety of legitimate ways of living. Custom as a source of law has had important practical significance in the colonial and post-colonial application of Hindu law, as courts have frequently had to decide whether a particular community practice overrides or supplements the textual rules.

The fifth source recognized in the colonial and post-colonial legal systems is legislation. Statute law, enacted by legislatures, can and does modify the ancient rules derived from the other sources. This is the source that Bangladesh has, so conspicuously and so unjustifiably, failed to deploy in the service of Hindu law reform.

This hierarchy of sources has significant jurisprudential implications. Unlike a purely positivist legal system in which statute law is unambiguously sovereign, the Hindu legal system operates with multiple overlapping sources of authority, none of which is simply dominant in all circumstances. A court applying Hindu law must navigate between ancient texts, regional commentaries, local customs, judicial precedents, and statutory modifications. This complexity has historically created both richness and confusion, and it is one of the arguments for legislative codification: to bring clarity and consistency to a system that, in its uncodified form, requires a level of scholarly expertise that most litigants and indeed most lawyers do not possess.

2.3 The Concept of Dharma and Natural Law Theory: A Comparative Analysis

The concept of Dharma, as a foundational principle of the Hindu legal tradition, invites comparison with the natural law tradition in Western jurisprudence. Both traditions posit that there exists, behind and beneath positive law, a normative order that positive law ought to reflect and express. Both traditions hold that positive law derives its legitimacy, at least in part, from its conformity to this higher normative order. And both traditions recognize that when positive law diverges fundamentally from the higher normative order, there is a basis for criticism, resistance, and reform.

But the comparison also reveals important differences. The Western natural law tradition, at least in its dominant forms, grounds the higher normative order in human reason. For Aquinas, natural law is the participation of rational creatures in the eternal law of God; it is accessible to human reason because human beings are rational creatures made in the image of God. For the modern natural law theorists like Finnis, the basic goods that ground natural law are accessible to practical reason, they are things that intelligent human beings can recognize as genuine human goods without any specifically religious revelation. The Hindu tradition, by contrast, grounds Dharma not primarily in reason but in revelation (Shruti) and in the cosmic order (Rita) that is disclosed through revelation. Dharma is not primarily something we figure out; it is something that has been revealed to the sages and transmitted through the textual tradition.

This difference has important practical consequences. In the Western natural law tradition, the accessibility of the higher normative order to reason means that rational argument can serve as a basis for legal reform: if we can show that a particular legal rule is contrary to reason or to genuine human flourishing, this is an argument for changing it. In the Hindu tradition, the situation is more complex. Arguments for reform must engage with the textual tradition, must show either that the ancient texts have been misread or misapplied, or that custom and changed circumstances justify departing from them, or that the principle of Dharmic adaptation to time and place supports modification. This is not impossible, as the history of Hindu legal reform in India demonstrates, but it requires a more nuanced argumentative strategy than simple appeals to reason or human rights.

There is a further dimension of comparison that deserves attention. Contemporary natural law theory, particularly the work of thinkers like John Finnis and his collaborators, has emphasized what they call "basic goods," things like life, knowledge, friendship, practical reasonableness, religion, that constitute genuine human flourishing and that positive law ought to protect and promote. A reform advocate for Hindu law in Bangladesh could argue, using this kind of framework, that the denial of property rights to Hindu women is a violation of their basic good of practical reasonableness, their capacity to be agents of their own lives, and that reform is therefore not merely a matter of policy preference but of fundamental justice.

But the more radical version of this argument comes not from natural law theory but from what might be called transformative jurisprudence. Karl Klare, writing about South Africa's post-apartheid constitution, coined the term "transformative constitutionalism" to describe a legal order committed not merely to preserving existing rights but to using law as an instrument of fundamental social transformation. Applied to the situation of Hindu personal law in Bangladesh, transformative jurisprudence would argue that the state's failure to reform laws that structurally

subordinate women is not merely an omission but an active perpetuation of injustice, that the constitution's commitments to equality and dignity impose an affirmative obligation on the state to act, and that the legal system as a whole cannot claim to be just while leaving thirteen million of its citizens subject to laws that deny their fundamental equality.

This argument connects to the rich and growing literature on postcolonial jurisprudence. Scholars like Upendra Baxi have argued that the dominant legal traditions of the formerly colonized world are themselves products of colonial knowledge production, that they reflect the priorities and assumptions of colonial administrators, and that genuine decolonization of the law requires a critical re-examination of these inherited traditions from the standpoint of those who were marginalized by them. Applied to Hindu law in Bangladesh, this argument suggests that what we have inherited is not simply "traditional Hindu law" but colonial Hindu law: a system shaped by British administrative needs and British intellectual frameworks that privileged certain texts, certain interpretations, and certain social arrangements over others. True decolonization would involve not merely preserving this colonial inheritance but subjecting it to critical scrutiny from the standpoint of the communities it governs.

2.4 Dharmasastra and the Question of Gender

No discussion of the philosophical foundations of Hindu law can avoid the question of gender, because the treatment of women is perhaps the most persistently controversial and most practically consequential aspect of the Dharmasastra tradition. The ancient texts are not uniform on this question. There are passages in the Vedas that celebrate women's spiritual equality; there are Smritis that grant women significant property rights over their Stridhana or personal property; there are stories and philosophical dialogues in the Mahabharata and the Upanishads in which women appear as learned scholars and spiritual authorities. And yet the dominant thrust of the Dharmasastra tradition on questions of women's legal status is unmistakably hierarchical and subordinating.

The Manusmriti contains the most notorious formulations. Manu declares that a woman is never fit for independence: in childhood she depends on her father, in youth on her husband, and in old age on her son. Women are excluded from performing certain religious rites without a male intermediary. Women's testimony is given less weight than men's in certain matters. And crucially for the present discussion, women's rights of inheritance under the classical tradition are severely limited compared to those of men.

It is important to understand that these provisions were not understood by their authors as arbitrary exercises of male power. They were understood as expressions of Dharma, as the proper ordering of social life that maintained cosmic and social harmony. This is precisely what makes the feminist critique of Hindu law so philosophically rich: it is not simply a critique of bad rules but a critique of the cosmological and theological framework that gave those rules their apparent legitimacy. Feminist legal theorists working in the Hindu tradition have argued that the classical texts have been selectively interpreted to emphasize subordinating elements while downplaying more egalitarian ones, that the concept of Dharma itself demands equal treatment

of all persons as children of the divine, and that a truly Dharmic legal order cannot be one that systematically denies the agency and dignity of half its members.

Uma Chakravarti's influential work on the Brahmanical construction of gender in ancient India, Lata Mani's analysis of the colonial debates over sati, and Flavia Agnes's comprehensive examination of women's rights under Hindu law in the post-colonial context all converge on a similar conclusion: that the gender norms embedded in Hindu law are not eternal or essential features of Hindu civilization but historically produced arrangements that served specific social interests and can be challenged and changed both from within the tradition and by appeal to principles of justice that transcend it.

In the specific context of Bangladesh, the feminist critique of Hindu law takes on additional dimensions. The women most affected by the inadequacies of Hindu law in Bangladesh are disproportionately from economically marginalized communities. They are often without education, without legal literacy, without access to the courts, and without the political influence necessary to demand legislative reform. The intersection of gender, religious minority status, and class creates what the critical theorist Kimberle Crenshaw would call an "intersectionality" of disadvantage: multiple overlapping systems of subordination that reinforce each other and that require not piecemeal but comprehensive reform to address.

2.5 The Concept of Legal Personality in Hindu Jurisprudence

The concept of legal personality, the idea of who counts as a full legal subject capable of holding rights and bearing duties, is fundamental to any legal system, and the Hindu tradition has its own sophisticated treatment of this concept. In the Dharmasastra tradition, legal personality is closely connected to the performance of religious duties, particularly the duty of offering funeral rites (Shraddha) and rice-balls (Pinda) to deceased ancestors. This connection between legal personality and religious obligation is one of the most distinctive features of Hindu jurisprudence, and it is the foundation on which the Dayabhaga school of Bengal, the school that governs Hindu Bangladeshis, builds its distinctive theory of inheritance.

Under the Dayabhaga system, the right to inherit from a deceased person depends not on the blood relationship with the deceased, as in the Mitakshara system, but on the capacity to confer spiritual benefit on the deceased through the performance of Shraddha. This seemingly arcane theological criterion has enormous practical consequences. It explains why the Dayabhaga system gives widows a more favorable position in inheritance than the Mitakshara system: the widow, as the person closest to the deceased husband, is considered capable of conferring the greatest spiritual benefit. It also explains why under the Dayabhaga system, unlike the Mitakshara, sons do not acquire a vested right in ancestral property simply by virtue of their birth: they acquire the right only on the father's death, when they become capable of performing the Shraddha for him.

The spiritual-benefit principle as a determinant of inheritance rights is, from a modern constitutional standpoint, deeply problematic. It ties property rights to religious practice in a way that excludes those who, for whatever reason, do not or cannot perform the required rituals. It

discriminates against women on the ground that women's performance of Shraddha is considered less efficacious than men's, though this is itself a contested interpretation that the founder of the Dayabhaga school, Jimutavahana, partially challenged. And it is incompatible with the secular, non-discriminatory approach to legal rights that a modern constitutional state is committed to.

At the same time, understanding the internal logic of the Dayabhaga system is essential to understanding what kind of reform is appropriate. A reform that simply grafts modern statutory provisions onto an unchanged underlying structure may produce contradictions and injustices of its own. What is needed is a reform that is philosophically coherent, that understands why the system works as it does, and that addresses the foundational principles rather than merely the surface rules.

CHAPTER THREE: THE DAYABHAGA SCHOOL: IDENTITY, ORIGINS, AND DOCTRINE

3.1 Jimutavahana and the Genesis of the Dayabhaga

The Dayabhaga School of Hindu law takes its name from its foundational text, the Dayabhaga, a legal treatise written by the Bengali jurist Jimutavahana, most likely in the twelfth century CE, though there is scholarly debate about the precise dating. The name Dayabhaga means literally "partition of inheritance," reflecting the text's central concern with the rules governing the division of property among heirs. The Dayabhaga is one part of Jimutavahana's larger work, the Dharmaratna, of which other sections (the Vyavahara-matrika and the Kalavivarnam) also survive, though the Dayabhaga alone has attracted the extensive commentary tradition that made it the dominant authority on inheritance law in Bengal.

The biography of Jimutavahana is known to us only in outline. He was a Bengali jurist of the Brahmin caste, writing in the tradition of the Nibandha or digest literature, who produced what would become one of the most influential legal texts in the history of Bengal. His work was known and discussed by other jurists in the centuries after his death, and by the time of the British colonial encounter it was firmly established as the supreme authority on inheritance and succession law in the Bengal presidency. The British, who needed to identify authoritative texts to apply as "Hindu law" in their courts, fastened on the Dayabhaga precisely because of this recognized authority, and in so doing gave it a kind of official status it had never previously had in the more fluid and pluralistic pre-colonial legal environment.

The intellectual character of the Dayabhaga is distinctive. Jimutavahana was a systematic and critical thinker who did not simply compile and harmonize earlier authorities but subjected them to rigorous analysis and sometimes rejected interpretations he found logically unsatisfactory. The central doctrinal innovation of the Dayabhaga is the "spiritual benefit" (pinda-doh) principle of inheritance: the proposition that the right to inherit depends not on birth-relationship per se but on the capacity to confer spiritual benefit on the deceased through the offering of pindas or rice-balls in the Shraddha ceremony. Jimutavahana derived this principle through a careful analysis of

the scriptural and smriti texts, arguing that it provided the most coherent and philosophically satisfying explanation of why certain relatives inherit and others do not.

This principle had, as we have noted, several consequences that distinguished the Dayabhaga system from the Mitakshara. Most importantly, it meant that sons do not acquire a vested right in ancestral property simply by virtue of being born into the family. Under the Mitakshara system, the doctrine of coparcenary property meant that a male member of a joint Hindu family acquired an interest in the family's ancestral property at birth, giving him a right that could not be extinguished simply by the will of the father. The Dayabhaga rejected this doctrine. Under the Dayabhaga system, the father is the sole owner of all property, both ancestral and personal, during his lifetime. His sons acquire rights only on his death. This has significant practical implications for the law of partition, for the wife's and widow's rights in family property, and for the alienability of ancestral property.

It also means, crucially, that widows have a stronger position under the Dayabhaga than under the Mitakshara. Under the Mitakshara, a widow who survives her husband in an undivided family cannot take his share of the coparcenary property because that share was never fully "his" in the way necessary to make it inheritable; it was held jointly with his male coparceners. Under the Dayabhaga, since the father is the sole owner of all property and holds it without any competing vested interest in his sons, the widow takes his entire share on his death, even if he is survived by brothers who live with him in a joint family arrangement. This is one of the respects in which the Dayabhaga system, despite its many patriarchal features, is actually more favorable to women than the Mitakshara.

3.2 The Position of Women Under the Dayabhaga: A Detailed Analysis

The position of women under the Dayabhaga law of Bengal and Bangladesh is a topic of considerable complexity. There are ways in which the Dayabhaga is more generous to women than the Mitakshara, and ways in which it remains deeply inadequate by modern standards of gender justice. Understanding both aspects is essential to designing appropriate reforms.

In the Dayabhaga system, the following five classes of women are recognized as heirs under the classical rules: the widow (or widows, in the case of a polygamous Hindu male), the daughter, the mother, the paternal grandmother, and the paternal great-grandmother. These women inherit in the order listed, each class excluding those that follow. It is important to note that this classification already represents a significant recognition of female inheritance rights: under the strict classical Mitakshara law, before the reforms introduced by the Hindu Law of Inheritance (Amendment) Act of 1929, the inheritance rights of women were even more restricted.

However, the critical qualification is that women under the Dayabhaga system, when they inherit from a male relative, take only a "life interest" in the inherited property. They are owners, but owners with limited rights. They cannot sell or mortgage the inherited property except for purposes of "legal necessity" (including religious obligations, maintenance, and debts of the deceased). On their death, the property passes not to their own heirs but to the nearest male heir

of the original male owner. The woman, in other words, holds the property in a kind of trust; she is a custodian rather than a full proprietor.

This concept of "life interest" or "limited estate" for female heirs is one of the most consequential and most unjust features of the Hindu law applicable in Bangladesh. It has multiple and mutually reinforcing harmful effects. First, it denies women the full benefit of the wealth that has passed to them: they cannot use it as capital for investment, cannot mortgage it to fund a daughter's education, cannot sell it if a medical emergency demands it, and cannot leave it to their own children. Second, it creates a powerful incentive for male relatives of the original owner to pressure the female heir, to minimize her enjoyment of the property during her lifetime while waiting for it to pass to them on her death. Third, it sends a deeply demoralizing message about the legal status of women: that they are not full citizens capable of exercising rights but are, in property law terms, permanently in a kind of minor's status, incapable of being trusted with the full ownership of what is legally theirs.

The doctrine of limited estate for women was abolished in India by the Hindu Succession Act of 1956, which provided that all female heirs take property absolutely and not as a limited estate. This single reform, unremarkable in its legislative brevity but revolutionary in its practical effect, transformed the position of Hindu women in India. Bangladesh has not enacted this reform. A Hindu widow in Bangladesh today still takes only a life interest in her deceased husband's property. A Hindu daughter, even where she inherits, takes only a limited estate. The contrast with the position of a Muslim widow in Bangladesh, who takes absolutely her share under Muslim personal law, could not be more stark.

The situation with respect to daughters is even more unfavorable. Under the Dayabhaga system, daughters inherit from their deceased fathers only in the absence of sons, widows, and all other male heirs in the classical hierarchy. In practice, given the prevalence of sons and the structure of joint Hindu families, daughters inherit very rarely. And even when they do inherit, they take only a life interest. Furthermore, a daughter's right of inheritance under the Dayabhaga is not in agricultural land but primarily in non-agricultural movable and immovable property; in many cases, the most valuable assets of a rural Hindu family, the agricultural land, pass to male heirs even before female heirs of any kind are reached.

The position of Stridhana deserves separate attention because it represents the one area of Hindu law in which women's property rights are both more secure and more absolute. Stridhana consists of property that a woman has received as gifts from relatives and others on various occasions: at the time of marriage (gifts from her natal family, her husband's family, and others), during widowhood, and at other times recognized by the texts. A woman's Stridhana is her own absolute property, over which she has full rights of ownership, alienation, and testamentary disposition. The existence of the Stridhana concept represents a significant acknowledgment within the Hindu tradition that women can and should be full owners of at least some property. The reform question is why this principle of full ownership cannot be extended to all property that comes to a woman by inheritance or other means.

3.3 The Mitakshara-Dayabhaga Divide: A Jurisprudential Analysis

The distinction between the Dayabhaga and Mitakshara schools of Hindu law is not merely a technical legal matter but a jurisprudential and philosophical divide that reflects fundamentally different conceptions of the nature of property, the structure of the family, and the relationship between individuals and their ancestors. Understanding this divide is important not only for comparative purposes but for understanding what kind of reforms are appropriate within the Bangladeshi context.

The Mitakshara school, whose foundational text was written by Vijaneswara in the twelfth century as a commentary on the Yajnavalkya Smriti, is the dominant school across most of India outside Bengal and its adjacent areas. Its defining feature is the concept of the "coparcenary," a body of persons who hold ancestral property jointly and have equal vested interests in it from the moment of their birth into the family. The coparcenary in the classical Mitakshara system was exclusively male: only male lineal descendants of a common ancestor (up to three generations in the descending line) could be coparceners. Each male member, from the moment of his birth, acquires an undivided interest in the coparcenary property. This interest is not derived from any act of inheritance; it arises automatically and inalienably from the bare fact of birth.

The Dayabhaga's rejection of this birth-right principle in favor of the spiritual-benefit inheritance principle has a different kind of philosophical coherence. Jimutavahana's argument was essentially this: what is the rational basis for determining who inherits? The Mitakshara says blood relationship. But blood relationship is a very general criterion that applies to many people who clearly do not inherit from each other; it cannot, by itself, explain why some relatives inherit and others do not. The more precise criterion, Jimutavahana argued, is spiritual benefit: the closer a person is to the deceased in terms of the spiritual services they can render, the stronger their claim to inherit. This leads to a more individualistic conception of property and inheritance: property belongs to its owner as an individual, not to the family as a collective body, and it passes on death to those who are spiritually closest, rather than being held all along by a corporate group.

From the standpoint of modern jurisprudence, the Dayabhaga's individualistic approach has certain advantages over the Mitakshara's collectivism. The Mitakshara coparcenary, in its classical form, gave sons a vested interest in the father's property during the father's lifetime that could constrain the father's freedom of disposition; this was a significant limitation on individual property rights that sat awkwardly with the modern liberal conception of ownership. The Dayabhaga's approach, by giving the father full control over property during his lifetime, is in this sense more compatible with modern property law concepts. The problem, as we have seen, is the treatment of women as heirs: the spiritual-benefit criterion, as traditionally applied, works against women's inheritance rights, and this is where reform is most urgently needed.

It is worth noting that Henry Thomas Colebrooke, the great British Indologist whose translations of the Dayabhaga and Mitakshara in the early nineteenth century were among the most important events in the colonial construction of Hindu law, observed that the Dayabhaga was in certain respects a more sophisticated and internally consistent legal system than the Mitakshara. Colebrooke's influence on the British judicial application of the Dayabhaga in Bengal was

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enormous, and his work illustrates the extent to which the colonial encounter shaped, and indeed partly created, the "Hindu law" that courts applied.

CHAPTER FOUR: THE COLONIAL CONSTRUCTION OF HINDU LAW

4.1 The East India Company and the Problem of Personal Law

The story of how Hindu law came to take the form it takes in Bangladesh today is inseparable from the story of British colonialism in Bengal. This is not merely a historical observation; it is a jurisprudential claim of the first importance. The Hindu law that is applied in Bangladeshi courts today is not simply "traditional Hindu law" transmitted unaltered from ancient texts. It is a colonial construct: a system shaped by the administrative needs of the East India Company and later the British Crown, by the intellectual frameworks and biases of British Orientalist scholars, by the institutional constraints of the colonial court system, and by the selective use of certain texts and interpretations over others. Understanding this colonial construction is essential both to explaining the current state of Hindu law in Bangladesh and to developing an appropriate framework for reform.

When the East India Company established its authority over Bengal following the Battle of Plassey in 1757 and the grant of the Diwani in 1765, it faced an immediate practical problem: how to govern a population whose personal affairs, particularly matters of inheritance, marriage, and family, were governed by a complex and diverse body of local law and custom rather than by any single codified system. The Company was not interested in replacing this personal law with English law; it was interested in administering Bengal efficiently and profitably, and the imposition of English law on personal matters would have provoked enormous resistance and disruption. The solution adopted by Warren Hastings, the first Governor-General, and embodied in the Bengal Regulation of 1772, was to preserve the existing personal laws while subjecting them to adjudication by Company courts. The regulation directed that "in all suits regarding inheritance, marriage, caste, and other religious usages or institutions, the laws of the Koran with respect to Mahometans and those of the Shaster with respect to Gentoos shall be invariably adhered to."

This regulation had profound consequences. By directing courts to apply "the laws of the Shaster," it implied that there was a single body of Hindu law applicable to all Hindus, contained in identifiable texts, and capable of being applied by a court system. In reality, Hindu legal practice before the colonial period was far more varied, more locally contingent, and more customary than this formulation suggested. Different communities in different regions followed different rules, resolved disputes through different local institutions, and looked to different local authorities for legal guidance. The colonial imposition of a text-based Hindu law administered by Company courts was itself a significant transformation of the pre-existing legal landscape.

To implement the regulation, the Company needed both the texts and the expertise to interpret them. In the early period, it relied on Hindu pandits or scholars, who were attached to the courts

and asked to provide expert opinions on questions of Hindu law. This system of "pundits" produced its own distortions: the pandits who gained access to the colonial court system were typically Brahmin scholars of particular regional and sectarian traditions, and their views on Hindu law were inevitably shaped by their own social positions and intellectual traditions.

The next phase of the colonial construction of Hindu law came with the great Orientalist scholars of the late eighteenth and early nineteenth centuries: Jones, Colebrooke, Halhed, and their successors. Warren Hastings, recognizing the inadequacy of the pandit system, encouraged the production of authoritative compilations and translations of Hindu legal texts. Nathaniel Halhed's compilation and translation of a digest of Hindu law (Vivadarnavasetu, translated as "A Code of Gentoo Laws") in 1776 was among the first results. More important was Henry Thomas Colebrooke's translation of both the Dayabhaga and the Mitakshara in 1810, under the title "Two Treatises on the Hindu Law of Inheritance." Colebrooke's work established these two texts as the principal authorities on Hindu inheritance law in the Bengal and Bombay presidencies respectively, and it did so in a way that inevitably privileged certain interpretations over others.

4.2 The Orientalist Construction and the Freezing of Hindu Law

The contribution of Orientalist scholarship to the development of colonial Hindu law is a topic that has been extensively analyzed by scholars including Lata Mani, Rosane Rocher, Nandini Bhattacharyya-Panda, and in the specific context of the Dayabhaga, Ludo Rocher. The general argument that emerges from this scholarship is that the Orientalist enterprise, for all its intellectual sophistication and genuine learning, was not a neutral scholarly activity. It was an activity shaped by colonial power relations, by British administrative needs, and by intellectual frameworks derived from European law and philosophy that did not always translate smoothly to the Indian legal context.

The specific mechanism by which colonial scholarship "froze" Hindu law is worth examining carefully. In the pre-colonial period, the Nibandha or digest tradition was living and dynamic. New digests were being written, old authorities were being reinterpreted, the relationship between texts, custom, and local practice was constantly being renegotiated. The colonial court system, by selecting certain texts as authoritative and applying them as the "law" of a defined community, effectively ended this dynamic process. The Dayabhaga became not one authoritative text among several that Bengali jurists drew on and interpreted creatively, but THE law of inheritance for all Hindus in Bengal, to be applied literally and consistently by courts whose primary loyalty was to legal certainty and administrative efficiency rather than to the living traditions of the communities they governed.

The famous case of Collector of Madura v. Mootoo Ramalinga Sathupathi (1868) before the Privy Council illustrates this dynamic in a different regional context: the Privy Council held that the terms of the ancient texts must be applied literally, and that courts should not attempt to expand or develop the law as a common law court might. This "text-bound" approach to Hindu law, while understandable as a judicial policy designed to give content to a body of law that British judges could not independently evaluate, had the effect of making Hindu law uniquely

resistant to the kind of evolutionary judicial development that English common law was constantly undergoing.

The colonial construction of Hindu law thus produced a peculiar double bind. On one hand, the texts selected as authoritative were interpreted strictly and applied uniformly, eliminating the flexibility and local variation that had characterized pre-colonial Hindu legal practice. On the other hand, the texts themselves, having been produced in a pre-modern social context, contained many provisions that were ill-adapted to the conditions of an increasingly urbanized, commercially active, and educationally differentiated society. The result was a system that was both rigid and inadequate, strict in its application of ancient rules and incapable of the evolutionary development that would have allowed it to remain relevant.

This is precisely the situation that Bangladesh inherited at independence in 1971 and has, remarkably, failed to address in the more than five decades since.

4.3 Landmark Colonial Legislation and Its Significance

Several pieces of colonial legislation are particularly important for understanding the current state of Hindu law in Bangladesh. The first and most fundamental is the application of the "Anglo-Hindu law" in the courts of Bengal, which established the basic framework of colonial Hindu law as applicable in what is now Bangladesh.

The Hindu Widows' Remarriage Act of 1856 was one of the most significant pieces of reform legislation of the colonial period. Before this Act, the remarriage of Hindu widows was widely considered contrary to Hindu law and custom, particularly for upper-caste women. The reformer Ishwar Chandra Vidyasagar led the campaign for the Act, arguing both from Hindu scriptural authority (citing the Parasara Smriti as authorizing widow remarriage in the current age) and from utilitarian principles of human welfare. The Act allowed Hindu widows to remarry legally and provided that such a marriage would not be void under Hindu law. This was a significant legislative intervention in Hindu personal law, and it established a precedent, acknowledged too rarely in subsequent decades, that Hindu law can and should be reformed through legislation when it produces social injustice.

The Act is still technically in force in Bangladesh, which means that Hindu widows in Bangladesh have a statutory right to remarry. However, the social and practical reality is that widow remarriage among Hindus in Bangladesh remains rare and socially stigmatized, particularly in rural communities. The gap between legal right and social practice is enormous, and this gap is itself a significant topic for legal reform, because a right that cannot be practically exercised is, in many contexts, no right at all.

The Hindu Women's Rights to Property Act of 1937 is another piece of colonial legislation that remains operative in Bangladesh and whose significance deserves careful examination. The Act was enacted to address the specific injustice of the Hindu widow's position: prior to the Act, where a Hindu male died intestate (without a will) leaving a widow but also leaving brothers or other male relatives, the widow's right to her husband's share was extremely limited. The Act

gave the widow a "widow's estate" equal to the share that would have gone to a son, if she had been a son. This was a significant improvement over the pre-existing position, but it maintained the principle of "life interest" rather than absolute ownership: the widow took the property only for her lifetime, and on her death it passed to her husband's heirs, not to her own heirs.

The Hindu Law of Inheritance (Amendment) Act of 1929 introduced certain changes to the classical inheritance rules, specifically recognizing the inheritance rights of a son's daughter, a daughter's daughter, a sister, and a sister's son in certain circumstances. This Act is technically applicable in Bangladesh but, as has been pointed out, applies only to Hindus who follow the Mitakshara school, while most Hindus in Bangladesh follow the Dayabhaga school. This creates the curious situation in which an important piece of reform legislation technically in force in Bangladesh does not actually apply to most Bangladeshi Hindus.

The Special Marriage Act of 1872, while not specifically a Hindu law statute, deserves mention in this context because it provides an alternative to religious marriage for persons of different castes or faiths. Under the Act, persons of different castes or religions can marry in a civil ceremony without the provisions of their personal religious law applying. This Act is potentially significant for Hindu Bangladeshis because it provides the one legal route by which Hindu couples of different castes can marry; inter-caste marriage is otherwise not recognized under traditional Dayabhaga law. However, the Act's practical use by Hindus in Bangladesh has been minimal, partly because of lack of awareness, partly because of social stigma, and partly because the procedural requirements are unfamiliar and often inaccessible.

4.4 The Partition of India and the Creation of East Pakistan

The partition of British India in August 1947, creating the independent states of India and Pakistan, had immediate and profound consequences for the Hindu community that remained in what became East Pakistan (later Bangladesh). Prior to partition, Hindus were a significant minority in Bengal: in the 1941 census, they constituted approximately 28 percent of the population of undivided Bengal. Partition produced a dramatic demographic shift. Large numbers of Hindus migrated from East Pakistan to India, particularly West Bengal, in the years immediately following partition. Violence, economic uncertainty, and the sense that East Pakistan's identity as an Islamic state would make life difficult for non-Muslims drove this migration.

From a legal standpoint, partition created a crucial bifurcation. In the Indian dominion, Hindu law remained in force but was subject to the reform process already underway. The Hindu Code Bills debated during the late 1940s and early 1950s in India's Constituent Assembly and Parliament, while initially defeated in their comprehensive form, eventually resulted in the four Hindu Code Acts of 1955-56. In East Pakistan, by contrast, the legal system that had prevailed under British India remained formally in force, but there was no comparable reform impulse. The political and religious identity of Pakistan as an Islamic state meant that Hindu personal law was a low priority for legislators. The Hindu community, reduced in numbers by migration and politically marginalized by the structure of Pakistani politics, lacked the voice and influence necessary to demand legislative reform of their personal law.

The result was that by the time East Pakistan became Bangladesh in 1971, Hindu law in the region was already significantly more archaic than Hindu law in India. The Indian reforms of 1955-56 had introduced divorce, abolished polygamy, given women absolute ownership of inherited property, and fundamentally restructured the inheritance hierarchy. None of these changes had occurred in what was then East Pakistan. Bangladesh thus inherited, as a legacy of partition and its aftermath, a body of Hindu law that was frozen at the pre-1947 position, while India's Hindu law had moved forward with the passage of time and legislative reform.

CHAPTER FIVE: BANGLADESH'S CONSTITUTIONAL FRAMEWORK AND HINDU LAW

5.1 The Constitution of Bangladesh and Its Promises

The Constitution of Bangladesh, adopted in 1972 and subsequently amended multiple times, contains several provisions of fundamental importance for the question of Hindu law reform. Understanding these provisions, their interpretation by the courts, and their relationship to the personal law regime is essential for situating Hindu law reform within the appropriate constitutional framework.

Article 27 of the Constitution provides that all citizens are equal before law and are entitled to equal protection of law. Article 28 prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. Article 28(2) specifically provides that women shall have equal rights with men in all spheres of state and public life. Article 41 guarantees freedom of religion, including the right to profess, practice, or propagate any religion, and the right of religious communities to establish and maintain religious institutions.

These constitutional provisions create a complex matrix of considerations for Hindu law reform. On one hand, Articles 27 and 28 appear to demand that all citizens, regardless of religion, enjoy equal legal treatment. If Muslim women enjoy more favorable inheritance rights than Hindu women under the law, is this not discrimination on grounds of religion that Article 28 prohibits? If Hindu women are denied the absolute ownership of inherited property that their Muslim counterparts enjoy, does this not deny them the equal protection of law that Article 27 guarantees?

On the other hand, Article 41 guarantees freedom of religion and the right of religious communities to maintain their own institutions, which could be read as protecting the application of personal law to religious communities as an aspect of their religious freedom. If the state compels Hindus to marry or inherit in ways contrary to their religious tradition, is this a violation of the religious freedom guaranteed by Article 41?

This tension between equality guarantees and religious freedom guarantees is not unique to Bangladesh. It is one of the central tensions in the constitutional law of every pluralistic democracy that maintains a system of religious personal laws. In India, it has been the basis of

the long-running debate about the Uniform Civil Code that Article 44 of the Indian Constitution envisages. In Bangladesh, it has been less publicly debated but is equally real.

The resolution of this tension that this treatise proposes, and that is increasingly accepted in contemporary constitutional scholarship, is that equality and religious freedom are not simply in opposition but must be interpreted together, in light of the fundamental commitment to human dignity that underlies both. Religious freedom does not protect legal rules within a religious personal law system that deny the fundamental equality and dignity of members of the religious community, particularly when those members did not choose to be governed by those rules but are subject to them by virtue of their birth into a religious community. A widow who did not choose the Dayabhaga system but is governed by it because she was born into a Hindu family cannot be said to be "freely exercising" her religion when she accepts the limitation of her inheritance rights; she is simply subject to a legal system she had no role in creating and no power to exit.

This is the point made by the feminist jurisprudence of equality, articulated most powerfully in the Indian context by jurists like Indira Jaising, Flavia Agnes, and Vrinda Grover: that religious personal law systems, when they deny women equal rights, are not expressions of religious freedom but impositions of patriarchal power, and that the constitution's guarantee of equality must be understood to apply within as well as between religious communities.

5.2 The Role of the Bangladesh Law Commission

The Bangladesh Law Commission has, at various points, turned its attention to the question of Hindu law reform. In 2006, the Commission proposed a comprehensive Hindu Family Code that would have introduced codified rules governing Hindu marriage, maintenance, adoption, and succession. The proposed code drew heavily on the model of the Indian Hindu Code Acts of 1955-56, adapting them to the Bangladesh context and taking account of the specific features of the Dayabhaga school. Key provisions of the proposed code included the introduction of divorce for Hindus, mandatory registration of Hindu marriages, the grant of absolute ownership to female heirs (abolishing the life interest concept), and the recognition of equal inheritance rights for daughters.

The proposed code was never enacted. Political considerations, including the sensitivity of any changes to religious personal law in a predominantly Muslim country and the reluctance of successive governments to invest political capital in a reform that would primarily benefit a religious minority, appear to have been decisive. Some opposition also came from within the Hindu community itself, where certain conservative voices argued that the traditional Dayabhaga system should not be tampered with. This internal opposition, while numerically small, provided a convenient justification for governments disinclined to act.

In 2012, the Law Commission made a more limited proposal, focusing specifically on the reform of the inheritance provisions of Hindu law. The 2012 proposals, like those of 2006, remained unimplemented. The Bangladesh Hindu Marriage Registration Act of 2012, which did pass into law, represented the only legislative action on Hindu personal law in the post-independence

period, and even this Act was deliberately made voluntary rather than mandatory, limiting its practical effect.

The failure to implement the Law Commission's recommendations raises serious questions about the processes and institutions of law reform in Bangladesh. Why have successive governments, including governments of quite different political orientations, failed to act on repeated expert recommendations that a clearly identified injustice should be remedied? The answer to this question requires an understanding not merely of the technicalities of legislative procedure but of the political economy of minority rights in Bangladesh, a topic to which we turn in the next section.

5.3 International Human Rights Obligations and Their Domestic Effect

Bangladesh is a party to several international human rights instruments whose provisions bear directly on the question of Hindu law reform. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to which Bangladesh acceded in 1984, is the most directly relevant. CEDAW requires states parties to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations, including equal rights in matters of property and inheritance. Bangladesh made a reservation to Article 2 of CEDAW (which requires the elimination of discriminatory laws) on the ground that the provision conflicts with Sharia law applicable to Muslim family law. No similar reservation was made with respect to Hindu law, which means that Bangladesh's failure to reform the discriminatory inheritance provisions of Hindu law is straightforwardly in violation of its CEDAW obligations.

The International Covenant on Civil and Political Rights (ICCPR), to which Bangladesh acceded in 2000, provides in Article 26 that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. Article 18 protects freedom of thought, conscience, and religion. The relationship between these two provisions, in the context of religious personal law, raises the same questions that we examined in the constitutional context, and the UN Human Rights Committee's General Comment No. 28 makes clear that states cannot justify gender discrimination in family law by reference to religion or tradition.

The Convention on the Rights of the Child (CRC), ratified by Bangladesh in 1990, contains provisions concerning children's rights in the context of family law, including the right to know and be cared for by their parents and the right to have their best interests treated as a primary consideration in all decisions affecting them. These provisions are relevant to the Hindu law of adoption and guardianship, which also stands in need of reform.

What practical effect do these international obligations have in the Bangladeshi domestic legal system? The Bangladesh Constitution does not explicitly provide for the direct applicability of international treaty obligations in domestic law. However, Article 25 of the Constitution directs the state to base its international relations on principles including respect for international law and principles enunciated in the United Nations Charter. The Supreme Court of Bangladesh has in several cases drawn on international human rights norms in interpreting constitutional

provisions, particularly in cases concerning women's rights and fundamental freedoms. The courts have not directly applied international treaty obligations as binding law, but they have used them as interpretive aids.

The potential for using international human rights law as a lever for Hindu law reform is thus real but limited. It depends on the willingness of the courts to give effect to international obligations in the interpretation of domestic constitutional provisions, and on the willingness of individual litigants to bring cases that would create opportunities for such interpretation. The history of public interest litigation in South Asia, particularly the landmark cases in India and Nepal in which the courts have used international human rights principles to drive reform of personal law, offers a model that Bangladeshi advocates and jurists could draw on.

CHAPTER SIX: THE POLITICAL ECONOMY OF NON-REFORM

6.1 Why Hindu Law Has Not Been Reformed: A Political Analysis

The question of why Bangladesh has failed to reform its Hindu personal law despite more than fifty years of independence, multiple law commission recommendations, clear constitutional and international human rights obligations, and obvious social need is one that demands a frank and searching political analysis. Legal reform does not occur in a political vacuum; it occurs or fails to occur in response to the distribution of political power, the incentives facing legislators, the capacity and willingness of affected communities to mobilize, and the broader political culture in which law-making takes place.

Several factors, operating together, explain the legislative paralysis in this domain.

The first factor is the electoral insignificance of the Hindu community. In a democracy, legislators respond to the preferences of those who can affect their electoral prospects. The Hindu community in Bangladesh, at approximately eight percent of the population, is not sufficiently large in most constituencies to determine electoral outcomes on its own. Its political influence has historically been exercised through alliance with the Awami League, which styled itself as the champion of secularism and minority rights, but this alliance had the paradoxical effect of making Hindu law reform politically unnecessary: the Awami League could secure Hindu votes by positioning itself as protective of Hindu communities without actually having to deliver substantive legal reform. The transaction costs of actual reform, which might provoke criticism from Islamist opposition, outweighed the marginal electoral benefit from a community that had nowhere else to go politically.

The second factor is the internal diversity and frequent political timidity of Hindu community organizations. The organizations that might have been expected to campaign most vigorously for Hindu law reform have often been divided between those who prioritize securing the basic physical safety and property security of the Hindu community and those who are willing to engage with the more politically contentious question of internal reform of Hindu personal law.

Furthermore, some voices within the Hindu community, often associated with more conservative or Brahminical social interests, have actively opposed reform, particularly of inheritance and property rules that would transfer economic advantage from male to female community members.

The third factor is the political sensitivity of any legislative intervention in religious personal law in a country where Islam is the state religion (since the Eighth Amendment of 1988) and where Islamist parties and movements have significant influence. Any government proposing to reform Hindu law, even if the reform is entirely internal to the Hindu community and affects no one else, risks being accused of religious interference by political opponents willing to exploit communal sentiment. The political cost of such accusations, in a country where communal politics can be explosive, has consistently outweighed the political benefit of doing justice to a vulnerable minority.

The fourth factor is what might be called "legislative drift," the tendency of legislatures in poorly institutionalized democracies to focus on matters of immediate political salience and to defer indefinitely questions that are important but not urgent in terms of immediate political payoff. Hindu law reform is, by its nature, a complex, technical, politically sensitive, and electorally marginal issue. It requires sustained legislative attention, expert committee work, drafting, public consultation, and political courage. In a political environment dominated by the immediate concerns of electoral competition, security, economic management, and political survival, this kind of sustained, difficult, low-salience reform work is chronically underprioritized.

6.2 The 2024 Revolution and New Political Possibilities

The political upheaval of July and August 2024, which removed the Awami League government and installed an interim administration led by Nobel laureate Muhammad Yunus, has created a fundamentally new political context. The uprising that drove this change was led primarily by students and was animated by demands not merely for the removal of a particular government but for comprehensive systemic reform: of governance, of the judiciary, of the police, of the electoral system, and of the relationship between the state and its citizens. The "July Charter" that has guided the interim administration's reform agenda calls for legal reform, action against corruption, and inclusive citizenship.

This new political context creates both opportunity and risk for Hindu law reform. The opportunity is that a government committed to comprehensive legal reform and to inclusive citizenship might be more willing than its predecessors to take on the politically challenging but morally necessary work of reforming Hindu personal law. The interim government has, in the period since August 2024, promulgated nearly eighty ordinances covering an enormous range of legal matters, from labour law to criminal procedure to international crimes tribunal procedure. This extraordinary legislative energy creates a precedent for ambitious legal reform and suggests that the institutional capacity for rapid legislative action exists.

The risk is that the political context created by the revolution has also been marked by an intensification of communal tension. The violence against Hindu communities in August 2024

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and the subsequent period has created a climate of fear and insecurity within the Hindu community that may make sustained advocacy for internal legal reform more difficult. When a community is physically threatened, its most immediate priority is safety rather than legal transformation. Furthermore, the rise of Islamist political forces in the post-revolution political space creates new obstacles to any legislative action that might be characterized as favorable to religious minorities.

Nevertheless, the overall balance of considerations, in the view of this treatise, favors urgent and comprehensive action. The current moment of institutional flux, in which the legal architecture of Bangladesh is being reconsidered across many domains, may be precisely the right moment to address the long-deferred question of Hindu personal law. Delay continues to impose concrete costs on millions of citizens whose legal rights remain frozen in the colonial era. And the commitments to equality, dignity, and inclusive citizenship that animated the revolution of 2024 are directly implicated by the failure to reform a body of law that treats its subjects as less than full legal persons.

6.3 Asymmetric Citizenship and Structural Discrimination

The concept of "asymmetric citizenship" is useful for understanding the systemic nature of the injustice that Bangladesh's Hindu population experiences. As noted in a January 2026 analysis of the situation of Hindus in Bangladesh, Hindus may hold equal rights under the law in formal terms, but in practice they face greater vulnerability to violence, fewer chances of legal remedy, and are often marginalized in the processes through which the nation defines its collective identity. The failure to reform Hindu personal law is one dimension of this asymmetric citizenship, but it is a particularly consequential one because it affects the internal structure of the Hindu family and community.

When a Hindu woman's inheritance rights are inferior to those of a Muslim woman, this is not merely an incidental inequality. It is a structural feature of the legal system that positions Hindu women as doubly subordinated: as women in a patriarchal society, and as members of a religious minority whose personal law has never been modernized. This double subordination compounds itself in the life of an individual woman. The Hindu widow who is denied full ownership of her husband's property is more dependent on male relatives; that dependence makes her more vulnerable to exploitation and coercion; that vulnerability is heightened by the generally insecure position of the Hindu community in the broader society; and that insecurity is in turn reinforced by the legal weakness of her property position. These factors form a self-reinforcing cycle of disadvantage that can only be broken by legislative intervention.

The sociological literature on legal consciousness suggests that the experience of living under an unjust legal system has effects beyond the specific injustices it produces. When a community knows that the law does not treat its members as full citizens, this knowledge affects the community's sense of its own legitimacy and worth within the broader society. It communicates a message from the state: you are not fully ours, your rights are not a priority, your equality is not real. The reform of Hindu personal law is therefore not merely a technical legal matter but a

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statement of political belonging, a declaration by the state that all its citizens, regardless of religion, are treated as full and equal members of the political community.

CHAPTER SEVEN: SOURCES, CUSTOMARY LAW, AND JUDICIAL INTERPRETATION

7.1 The Role of Custom in Hindu Law

The formal text-based sources of Hindu law, as applied in colonial and post-colonial courts, were always supplemented and sometimes overridden by custom. The Privy Council, which was the highest court of appeal for Indian cases during the colonial period, recognized in a series of important decisions that a proved custom could prevail over the general rules of the Dharmashastras. The foundational statement of this principle is found in the Privy Council's decision in Collector of Madura v. Mootoo Ramalinga Sathupathi (1868), where the court stated that "clear proof of usage will outweigh the written text of law." The courts also recognized, in the famous formulation, that to constitute a binding custom it must be ancient, certain, reasonable, and continuously observed.

The role of custom in Hindu law as applied in Bangladesh deserves particular attention because it creates both flexibility and uncertainty. Flexibility, because a community that has developed customs different from the classical textual rules can potentially have those customs recognized by the courts. Uncertainty, because the requirements for a legally binding custom are often difficult to satisfy, particularly the requirement of antiquity and continuity. In practice, the recognition of custom in Hindu law proceedings in Bangladesh is dependent on the availability of evidence, the quality of legal representation, and the sophistication of the court, all of which are highly variable.

Custom has been particularly important in the domain of marriage. The classical rules of Hindu marriage, including the requirement that the parties be of the same caste, have been substantially modified by custom in various sub-communities. The courts have recognized a wide range of customary forms of Hindu marriage, provided that they satisfy the basic requirement of being publicly performed and intended as a permanent union. However, the absence of a mandatory registration system for Hindu marriages means that many customary marriages go unregistered, creating serious problems when disputes arise about whether a marriage took place, whether a woman was the lawful wife of a deceased man, and whether children are legitimate.

The Hindu Marriage Registration Act of 2012, the only significant Hindu law legislation of the post-independence period, addresses this problem but does not solve it, because registration under the Act is voluntary, not mandatory. The result is that the Act has had limited practical effect. Many Hindu families do not register their marriages because they are unaware of the Act, because the registration process is inaccessible, or because there is no incentive to register in the absence of a legal requirement. The legal consequences of non-registration, including the

difficulty of proving marriage in court proceedings, fall disproportionately on women, who are more likely to need to prove their marital status in maintenance or inheritance disputes.

7.2 Judicial Interpretation and the Development of Case Law

The corpus of judicial decisions on Hindu law in Bangladesh, while not as extensive or as systematically reported as the case law in India, is nevertheless a significant source of law and a revealing record of how the courts have grappled with the complexities and inadequacies of the inherited legal system. Examining this case law reveals both the creative possibilities and the persistent limitations of judicial development in the absence of legislative reform.

The courts of Bangladesh (and before independence, the courts of East Pakistan) have applied Hindu law primarily through the colonial textual tradition, supplemented by the case law of the courts of undivided India and, after 1947, the case law of both Pakistani and Indian high courts. The Appellate Division and the High Court Division of the Supreme Court of Bangladesh are the highest courts with jurisdiction over Hindu law matters, and their decisions constitute binding precedent within the country. In practice, given the relatively small number of Hindu law cases that reach the Supreme Court, the case law is sparse, and many questions of Hindu law in Bangladesh remain unsettled.

One area in which the courts have shown some willingness to develop the law is the interpretation of "legal necessity" in the context of the female life-estate. As we have noted, a woman holding a life interest in inherited property can sell or mortgage it only for "legal necessity" (dharmasankat in the traditional formulation). The courts have, over time, expanded the concept of legal necessity to include not merely the religious and maintenance expenses traditionally recognized but also expenses for medical treatment, for the education of children, and for other purposes that a reasonable and responsible owner might need to incur. This judicial development, while helpful at the margins, does not address the fundamental injustice of the life-estate concept itself.

Another area of judicial activity is the determination of who constitutes a valid heir under the Dayabhaga system. This is often a contested question in succession disputes, and the courts have been called upon to resolve disputes about, for example, the relative rights of a widow and a daughter, the effect of a daughter's marriage on her inheritance rights, and the claims of adoptive versus biological heirs. The case law in these areas is complex and not always consistent, partly because the underlying legal rules are themselves complex and not always clearly expressed in the accessible sources, and partly because the courts are often dealing with parties who have different understandings of the applicable custom in their particular community.

The landmark case of Dina Nath Barman v. Bipin Bihari Barman decided by the Calcutta High Court in the pre-partition period, and subsequently applied in East Pakistan and then Bangladesh, established important principles about the widow's right to inherit in a joint family situation under the Dayabhaga. The case confirmed that under the Dayabhaga, unlike the Mitakshara, a widow takes her deceased husband's share of jointly held family property even if the family is undivided at the time of his death. This decision is consistently followed in Bangladesh, but its

practical effect is limited by the life-estate principle: the widow gets the property, but only for her lifetime.

The case of Nagendra Nath Bora v. Commissioner of Hills Division and Appeals (1958) decided by the Supreme Court of Pakistan, and subsequently followed in Bangladesh, addressed the question of whether the Hindu Women's Rights to Property Act of 1937 applied to agricultural land. The court held that it did not, because the Act explicitly excluded agricultural land from its scope. This exclusion has enormous practical consequences in rural Bangladesh, where the most valuable asset of most Hindu families is agricultural land, and where the 1937 Act's reform therefore has minimal real-world effect.

7.3 The Problem of Legal Literacy and Access to Justice

Any examination of Hindu law in Bangladesh must grapple honestly with the enormous gulf between formal legal rules and the actual legal experience of the vast majority of Hindus in Bangladesh. The formal law, complex and technical even for legally trained practitioners, is essentially inaccessible to most ordinary Hindus, particularly women, who are most likely to need it in situations of personal vulnerability: widowhood, separation, family property disputes. The barriers to access are multiple and mutually reinforcing.

The first barrier is knowledge. Most Hindus in Bangladesh have little or no awareness of the specific rules of Dayabhaga law that apply to them. They know that there is "Hindu law," but they do not know its detailed content. In many rural communities, the resolution of family property disputes takes place not in formal courts applying legal rules but through informal community processes that may reflect local custom, the authority of community elders, or straightforward power dynamics rather than anything recognized as formal law. Women who should be entitled to their widow's estate under the 1937 Act frequently receive nothing because neither they nor the male relatives with whom they are dealing know that the law gives them this right.

The second barrier is access to legal representation. In Bangladesh, as in most developing countries, legal representation is expensive and geographically concentrated in urban areas. The cost of bringing a Hindu law matter to court, even in the first instance before the District Court, is beyond the means of most rural Hindu women. Legal aid organizations exist but are under-resourced and unable to meet the demand. In this environment, the substantive content of the formal law matters less than the practical means by which it can be accessed and enforced.

The third barrier is the courts themselves. Hindu law cases in Bangladesh are handled by general civil courts that also deal with a wide range of other civil matters. Judges are not specially trained in Hindu law, and the available reference materials in Bengali and English are limited. The Dayabhaga and its commentaries are primarily available in Sanskrit, and the English translations that exist are over a century old and not easily accessible. In this environment, the quality of judicial decision-making in Hindu law cases is highly variable, and the outcomes of litigation are difficult to predict.

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These access-to-justice problems reinforce the argument for legislative codification. A well-drafted, accessible, codified Hindu personal law, written in plain language and incorporating the reforms necessary to bring it into conformity with constitutional equality principles and international human rights standards, would serve several purposes simultaneously: it would clarify the law, making it accessible to ordinary people without specialist training; it would create clear, enforceable rights; and it would establish a uniform national standard that could be applied consistently by courts throughout the country.

CHAPTER EIGHT: HINDU LAW IN COMPARATIVE PERSPECTIVE

8.1 The Indian Experience: Lessons and Limitations

The Indian reform of Hindu personal law through the Hindu Code Acts of 1955-56 is the most obvious and most directly relevant comparative example for Bangladesh. As we have noted, the Indian reform abolished polygamy, introduced divorce, gave women absolute ownership of inherited property, reformed the inheritance hierarchy to give daughters a significant role, and codified in accessible statutory form a system that had previously existed in dispersed, often inaccessible textual form. The subsequent 2005 amendment extended coparcenary rights to daughters in the Mitakshara system, giving daughters in joint Hindu families the same rights as sons in ancestral property.

The Indian experience offers several important lessons for Bangladesh. The first is that reform is possible. The fierce resistance that the Hindu Code Bills encountered in India in the late 1940s and early 1950s, including from President Rajendra Prasad himself, shows that comprehensive reform of Hindu personal law is politically difficult even in a country where Hindus are the demographic majority. But Dr. B.R. Ambedkar, who drafted the original Hindu Code Bill and resigned as Law Minister when it was not passed in its original form, and Jawaharlal Nehru, who persisted in pushing the legislation through in four separate Acts after Ambedkar's resignation, demonstrated that political will can overcome conservative resistance. The willingness of India's leadership to invest political capital in this reform, against significant opposition, is a model that Bangladesh's leaders have yet to emulate.

The second lesson is that reform needs to be comprehensive. The piecemeal approach, in which individual provisions are amended without addressing the underlying structure of the system, tends to produce anomalies, inconsistencies, and injustices that are often worse than those of the unreformed system. The Indian approach of enacting four comprehensive Acts covering the entire domain of Hindu personal law was more successful than a piecemeal approach would have been, and it created a coherent, internally consistent system that has proven capable of further development over time.

The third lesson, perhaps the most important for Bangladesh, concerns the importance of codification as distinct from mere content reform. Before the 1955-56 Acts, Indian Hindu law was technically accessible only through a complex, multi-layered tradition of textual sources,

commentaries, and case law that required specialist expertise to navigate. The Acts transformed this into a system contained in accessible statutory texts. This transformation was not merely administrative but substantive: it democratized the law, making it accessible to ordinary citizens, lawyers, and judges without specialist Sanskrit scholarship.

The Indian experience also has its limitations as a model for Bangladesh. The most significant is that the Indian reform was possible partly because Hindus are the majority community in India: reforming Hindu personal law was, in some sense, reforming the dominant community's law, and the political dynamics were very different from those in Bangladesh, where Hindus are a vulnerable minority. In India, there was a large, educated, reform-minded Hindu middle class that provided the social base for reform advocacy; in Bangladesh, the Hindu community, while not without its own educated elite, is smaller, more economically vulnerable, and more politically marginalized.

A second limitation is that Indian reform itself remains incomplete and uneven. The 2005 amendment extending coparcenary rights to daughters was implemented only after decades of litigation and advocacy, and the Supreme Court's 2020 decision in Vineeta Sharma v. Rakesh Sharma, which gave the amendment retrospective effect and settled a previously contested question of interpretation, came fully fifty years after the original 1956 Act. Bangladesh can learn from India's reform experience not only its successes but its delays and incomplete implementation.

8.2 The Nepal Model and the National Civil Code of 2017

Nepal's approach to the reform of its legal system, including the laws governing personal matters, offers a different and in some respects more radical model than India's. Nepal's National Civil Code of 2017 (Muluki Dewani Samhita) is a comprehensive civil code covering contracts, property, family law, and succession in a unified statutory framework applicable to all Nepalese citizens. Unlike the Indian approach of maintaining separate personal laws for different religious communities (with modifications), Nepal has moved toward a largely unified civil code that applies across religious and ethnic lines, with some allowance for customary law in specific communities.

Nepal's approach is philosophically significant because it reflects a commitment to legal universalism and equality that cuts across the tradition of religious personal law. By creating a single set of rules governing marriage, divorce, inheritance, and family matters applicable to all Nepalese citizens, Nepal has avoided the problem of asymmetric citizenship that characterizes Bangladesh's approach: in Nepal, there is no legal system under which Hindus' inheritance rights are inferior to Muslims', or vice versa, because the same rules apply to all.

The Nepal model is relevant to Bangladesh not as a prescription for immediate adoption of a uniform civil code, which would be politically and practically very difficult in the current context, but as a demonstration of one possible direction for legal development. The argument that religious personal law is an essential component of religious freedom, and that any movement toward uniformity violates that freedom, is one that the Nepalese experience helps to

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put in perspective: Nepal, with its own rich Hindu tradition, managed the transition to a largely unified civil code without experiencing the kind of religious crisis that critics of reform in South Asia often predict.

Within the Hindu legal tradition itself, the reform of Hindu personal law in Nepal is significant because it shows that the tradition is capable of fundamental transformation when the political will and intellectual resources for reform are present. The National Civil Code of 2017 was preceded by decades of feminist legal advocacy, judicial development through landmark Supreme Court cases, and sustained scholarly engagement with the relationship between Hindu legal tradition and constitutional rights. This process offers a model for the kind of sustained, multi-dimensional engagement that is needed in Bangladesh.

8.3 Pakistan and the Muslim Family Laws Ordinance: A Comparative Perspective

It is instructive to consider the fate of Muslim personal law reform in Bangladesh, as a comparative baseline for thinking about Hindu personal law reform. The Muslim Family Laws Ordinance of 1961, enacted when Bangladesh was still part of Pakistan, introduced important reforms to Muslim personal law, including the requirement that a husband wishing to divorce his wife must send notice to a Union Council (later the Arbitration Council), which must attempt reconciliation before the divorce can take effect; the requirement that a husband wishing to take a second wife must obtain the permission of the Arbitration Council; and the registration of Muslim marriages. These reforms were significant, if incomplete, interventions in Muslim personal law that gave women somewhat greater procedural protection against arbitrary divorce and polygamy.

The Muslim Family Laws Ordinance demonstrates several things that are directly relevant to the question of Hindu law reform in Bangladesh. First, it shows that legislative intervention in religious personal law is not constitutionally impossible; the Ordinance has been in force for over sixty years and has not been struck down as a violation of religious freedom. Second, it shows that reforms can be limited and incremental rather than comprehensive, targeting specific injustices without transforming the entire system. Third, it shows that the political will for reform can emerge when a combination of reformist advocacy, political leadership, and international pressure converges.

The contrast between the reform of Muslim personal law through the 1961 Ordinance and the non-reform of Hindu personal law in the same period is striking and illustrative. When Bangladesh was part of Pakistan, there was at least some political motivation to reform Muslim personal law as a matter of national governance. Hindu personal law, applicable to a small and politically marginal minority, attracted no comparable legislative attention. Since 1971, successive Bangladesh governments have maintained and developed the Muslim personal law structure while leaving Hindu personal law essentially untouched. The message this differential treatment sends to the Hindu community about their status as citizens of Bangladesh is unmistakable.

CHAPTER NINE: THEORIES OF LEGAL REFORM AND THEIR APPLICATION

9.1 Instrumentalism and the Limits of Policy-Driven Reform

The literature on legal reform can be broadly divided between instrumentalist approaches, which treat law as a tool to be used in the service of predetermined social goals, and approaches that insist on the internal logic and integrity of law as a normative system. Both perspectives have something to contribute to the analysis of Hindu law reform in Bangladesh, but neither is sufficient on its own.

The instrumentalist approach to legal reform begins with the identification of a social problem and asks what legal changes would best address it. Applied to Hindu law in Bangladesh, the instrumentalist would identify the following problems: women's inheritance rights are inadequate by the standards of gender justice; the absence of codified divorce law causes hardship for Hindus trapped in unsatisfactory marriages; the lack of mandatory marriage registration makes it difficult to prove marital status and legitimate birth; the adoption rules are complex and often inaccessible. The instrumentalist would then prescribe legal changes designed to address these problems: amend the inheritance rules, introduce divorce, make marriage registration mandatory, simplify and codify the adoption procedures.

This approach has obvious practical advantages. It focuses attention on concrete, measurable injustices and proposes concrete, measurable remedies. But it also has limitations. By treating law as merely an instrument of social policy, it may fail to appreciate the ways in which legal rules are embedded in deeper normative structures, including theological structures, that give them meaning and that must be engaged with rather than simply overridden if reform is to be sustainable. A reform that simply imposes new rules from outside without engaging with the internal logic of the Hindu legal tradition may produce formal change without genuine acceptance, and laws that are formally enacted but socially rejected may be even worse than no law at all, because they generate conflict without achieving justice.

The instrumentalist approach also tends to underestimate the political difficulty of reform. By treating legal change as primarily a technical matter of identifying the right rules and enacting them, it misses the ways in which legal rules are embedded in social structures, power relations, and political dynamics that make their reform far more difficult than a purely technical analysis would suggest.

9.2 Ronald Dworkin and Law as Integrity

Ronald Dworkin's jurisprudence of "law as integrity" offers a more nuanced approach to legal reform than simple instrumentalism. Dworkin argued that the law of a community is not merely a collection of rules enacted by past legislatures but a coherent moral vision to which the community is committed, expressed in its legal institutions, decisions, and principles. A legal system that claims integrity must treat all its members as equals: it cannot coherently commit itself to equality and dignity in some domains while maintaining rules in other domains that deny equality and dignity to some members.

Applied to Hindu law in Bangladesh, Dworkin's approach would argue that the failure to reform Hindu personal law is not merely a policy failure but a failure of legal integrity. The Bangladesh Constitution, as we have seen, commits the state to equality before the law and the prohibition of discrimination on grounds of religion and sex. A legal system that maintains rules under which Hindu women have lesser inheritance rights than Hindu men, and lesser inheritance rights than Muslim women, is simply inconsistent in its fundamental commitments. It is not a coherent system that treats all its members as equals; it is a contradictory system that gives with one hand (constitutional equality) and takes with the other (discriminatory personal law).

Dworkin's framework also helps to identify the appropriate response to this inconsistency. The "right answer" to the question of what Hindu law should say about women's inheritance rights, in Dworkin's framework, is the answer that best fits and justifies the totality of the legal materials, including the constitutional commitments to equality, the international human rights obligations, and the best interpretation of the Hindu legal tradition itself. This answer, in the view of this treatise, is the reform of the inheritance rules to grant women absolute ownership of inherited property and equal rights of inheritance with men, in conformity with the reforms that India introduced in 1956 and extended in 2005.

9.3 H.L.A. Hart and the Concept of Law: Rules, Primary and Secondary

H.L.A. Hart's analytical jurisprudence, particularly his distinction between primary rules (rules that impose duties or confer powers on individuals) and secondary rules (rules that specify how primary rules are to be created, modified, or recognized), offers another useful analytical framework for understanding the deficiencies of Hindu law in Bangladesh.

From a Hartian perspective, one of the fundamental problems with Hindu law as currently applicable in Bangladesh is its deficit of secondary rules. The primary rules of Hindu personal law exist, after a fashion, in the Dayabhaga and its commentaries, in the colonial legislation, and in the case law. But the secondary rules, the "rules of change" that specify how the system is to adapt to new circumstances, are almost entirely absent. Unlike a modern statutory system in which the legislature can enact new rules and the courts can develop the law incrementally through the common law method, the Hindu personal law system in Bangladesh lacks any effective mechanism for internal development. The Dayabhaga is not a living text being updated by scholarly commentary; it is a historical artifact being applied by courts without any clear authority to modify it. The colonial legislation has not been amended. The courts have been reluctant to develop the law beyond the textual framework. The legislature has not acted.

This deficit of secondary rules is not merely a technical problem but a jurisprudential crisis. A legal system without effective mechanisms of self-development is inherently unstable: it will eventually diverge so far from the social realities it is supposed to govern that it will either be abandoned in practice (as indeed much of Hindu personal law has been, in the sense that most disputes are resolved outside the formal legal system) or will produce injustices too egregious to ignore (as the inheritance rules do). The solution, from a Hartian perspective, is to create effective secondary rules: in the case of Hindu personal law in Bangladesh, this means legislative codification, which establishes a system of rules that can be identified clearly (addressing Hart's

"rule of recognition") and that can be modified through a defined legislative process (establishing a "rule of change").

9.4 Critical Legal Studies and the Ideological Function of Hindu Law

The Critical Legal Studies (CLS) movement, which emerged in American law schools in the 1970s and 1980s, argued that legal rules are not neutral instruments of social ordering but ideological formations that serve the interests of dominant social groups and that mystify the exercise of power by presenting it as the operation of neutral law. Applied to Hindu law, the CLS perspective would argue that the rules of the Dayabhaga system, far from being neutral expressions of cosmic order, are ideological formations that serve the interests of upper-caste, patrilineal Hindu male property owners against the interests of women, lower-caste Hindus, and others. The "objectivity" and "neutrality" of the legal form, in the CLS view, disguises what is actually a politically loaded distribution of rights and resources.

The CLS perspective is particularly useful in analyzing the colonial construction of Hindu law. By selecting the Dayabhaga as the authoritative text for Bengal, privileging its inheritance rules over local customary law, and applying it through a centralized court system that privileged Brahminical interpretations, the British colonial administration was not merely "applying Hindu law" in a neutral sense but was constructing a legal system that served particular social interests. The stability and order that colonial law provided came at the cost of freezing a hierarchical social arrangement that benefited some Hindus, particularly upper-caste male property owners, at the expense of others, particularly women and lower-caste Hindus.

The CLS perspective also illuminates the politics of resistance to Hindu law reform within the Hindu community. When conservative voices within the community argue that reform of the inheritance rules would be contrary to Hindu tradition or disruptive of the family structure, the CLS analyst would point out that this argument serves the material interests of those who benefit from the current distribution of property rights. The language of "tradition" and "religious protection" is, in this view, a way of naturalizing and legitimizing a distribution of power that serves specific social interests. This does not mean that all appeals to tradition are cynical or dishonest; it means that the appeal to tradition should always be subjected to the question: tradition for whom, serving whose interests, at whose cost?

9.5 Transformative Constitutionalism and Its Demands

Transformative constitutionalism, as a jurisprudential theory, holds that the constitution is not merely a framework for the organization of state power but an instrument of social transformation, committed to bringing about substantive rather than merely formal equality. The concept was developed primarily in the context of post-apartheid South Africa by scholars including Karl Klare, Sandra Liebenberg, and others, but it has gained significant purchase in the constitutional jurisprudence of other countries, including India and Bangladesh.

In the Indian context, the Supreme Court's jurisprudence on personal law has increasingly drawn on transformative constitutionalist ideas. The landmark case of Mary Roy v. State of Kerala

(1986) applied the Indian Succession Act to Christian women in Kerala who had previously been governed by discriminatory customary law, on the ground that the discriminatory custom was incompatible with constitutional equality. The case of Danamma v. Amar (2018), in which the Supreme Court held that daughters have equal coparcenary rights with sons under the 2005 amendment to the Hindu Succession Act, and gave this right retrospective effect, reflects a transformative reading of both the statute and the constitutional commitment to equality.

Applied to Bangladesh, transformative constitutionalism would argue that the constitutional commitments in Articles 27 and 28 impose an affirmative obligation on the state not merely to refrain from discriminatory legislation but actively to reform existing discriminatory law. On this view, the failure to reform Hindu personal law is itself a constitutional violation, not merely a policy failure. The courts of Bangladesh have not yet embraced this strong version of transformative constitutionalism in the specific context of Hindu personal law, but there are judicial decisions in related contexts that suggest the possibility of developing this jurisprudence.

CHAPTER TEN: THE SPECIFIC INJUSTICES: A SURVEY OF THE REFORM AGENDA

10.1 Marriage: From Religious Sacrament to Civil Contract?

The question of whether Hindu marriage should be reconceived from a religious sacrament to a civil contract, or to a hybrid of the two, is one of the most philosophically contentious issues in Hindu law reform. In the classical Hindu tradition, marriage is not a contract between two individuals but a samskara, a sacrament or rite of passage, that creates a permanent and indissoluble union of not just the persons but their ancestral lines. The seven steps around the sacred fire (Saptapadi) and the other ritual elements of the Hindu marriage ceremony are not merely symbols but are themselves, in the classical view, what constitutes the marriage; without them, no marriage has legally taken place.

In India, the Hindu Marriage Act of 1955 retained the essential features of the traditional marriage ceremony while superimposing a statutory framework that made marriage a legally regulated institution with clear rules about validity, eligibility, and dissolution. The Act preserved the religious form of marriage while subjecting it to civil legal consequences. This is the model that Bangladesh should adopt, and indeed the model that the proposed Hindu Family Code of 2006 drew on.

In Bangladesh, without any statutory framework governing Hindu marriage, the courts must determine whether a marriage has taken place by reference to the classical requirements: the performance of the essential ceremonies, including Saptapadi where it is customary, and the consent of the parties or their guardians. This creates significant evidential difficulties, particularly for lower-class and rural communities where marriages may be performed without documentation and where the question of whether the precise traditional ceremonies were performed may be genuinely uncertain.

The question of caste restrictions on marriage is also directly relevant. Under the classical Dayabhaga system, as it has been applied in Bangladesh, marriage between persons of different castes is not valid under Hindu law. The only exception is marriage under the Special Marriage Act of 1872, which enables inter-caste and inter-religious civil marriage. This caste restriction is not only socially harmful; it is almost certainly contrary to the constitutional prohibition of discrimination on grounds of caste contained in Articles 27 and 28 of the Bangladesh Constitution. Reform should explicitly abolish the caste restriction on marriage.

The introduction of divorce for Hindus is among the most urgently needed reforms. Bangladesh has no law providing for the dissolution of Hindu marriages. A Hindu woman or man trapped in an intolerable marriage cannot legally divorce. The only exit available to them is the practically and legally extremely difficult remedy of judicial separation under the Hindu Women's Right to Separate Residence and Maintenance Act of 1946, which provides limited relief but does not dissolve the marriage. In practice, many Hindus trapped in failed marriages either continue to live apart without legal dissolution, or enter into new relationships that are not legally recognized as marriages, creating a legal status for themselves and their children that is dangerously uncertain.

The argument against introducing divorce for Hindus in Bangladesh is sometimes made on the ground that the Hindu tradition regards marriage as indissoluble. But this argument is historically and theologically unsound. The ancient Dharmasastra texts themselves recognize several grounds for dissolution or separation: the misconduct of the husband, his abandonment of the wife, his taking of another wife without the first wife's consent, and other serious grounds. The ancient text Narada Smriti explicitly allows a woman to remarry in certain circumstances. The Hindu Remarriage Act of 1856, applicable in Bangladesh, recognizes the right of widows to remarry, effectively confirming that Hindu law does not regard marriage as absolutely indissoluble even in its traditional form. The question is whether the grounds recognized in the ancient texts as justifying separation or remarriage can serve as the basis for a modern statutory divorce law, and the answer, as India's experience shows, is clearly yes.

10.2 Inheritance: The Central Battleground

We have already analyzed the inheritance provisions of Hindu law in Bangladesh in some detail. It is worth here summarizing the specific reforms that are most urgently needed, as a way of concretizing the discussion of principles that has occupied the preceding chapters.

The most fundamental reform needed is the abolition of the "life estate" or "limited interest" concept for female heirs. Under the current law, women who inherit property from male relatives hold it only for their lifetimes; on their death, it passes to the male heirs of the original owner, not to the woman's own heirs. This limitation must be abolished, and all female heirs must be given absolute ownership of whatever they inherit, in the same way that India's 1956 Hindu Succession Act provided. This single reform would have an enormous practical impact on the position of Hindu women in Bangladesh.

The second priority is the reform of the inheritance hierarchy to give daughters a meaningful place in the succession to their fathers' property. Under the current law, a daughter inherits from her father only in the absence of sons, widows, and all other male heirs in the classical hierarchy. In practice, most Hindu fathers in Bangladesh die leaving at least one son, which means that most daughters never inherit from their fathers at all. At minimum, daughters should be given rights of inheritance in their father's property equal to those of sons, as India's 2005 amendment to the Hindu Succession Act provided.

The third priority is the reform of the rules governing a widow's inheritance rights. While the widow's position is actually somewhat stronger under the Dayabhaga than under the classical Mitakshara, the current rules are still inadequate. A widow who inherits her husband's property holds it only as a life estate; she cannot bequeath it to her own children. Furthermore, the Hindu Women's Rights to Property Act of 1937, the primary statutory instrument governing the widow's inheritance, explicitly excludes agricultural land from its scope. In a rural country like Bangladesh, where land is the primary form of wealth, this exclusion is catastrophic. The reform should extend the widow's inheritance rights to agricultural land and should give her absolute rather than life estate ownership.

The fourth priority is the clarification and reform of the rules governing Stridhana property. As we have noted, the concept of Stridhana represents an acknowledgment within the Hindu tradition that women can own property absolutely. Reform legislation should preserve and strengthen this concept, making explicit what kinds of property qualify as Stridhana, how it is transmitted on the woman's death, and what rights the woman's heirs (including her daughters) have in it.

10.3 Adoption: Complexity and Reform

The law of adoption for Hindus in Bangladesh is another area of serious complexity and inadequacy. Under the classical Dayabhaga system, adoption is a legal institution recognized and regulated by the ancient texts. The primary textual authority on adoption in Bengal is not the Dayabhaga itself but the Dattaka Chandrika, attributed to Kubera and written in the sixteenth century, which establishes the rules for Hindu adoption in the Bengal school.

Under the classical rules, adoption is a religious institution: the adopted son (dattaka putra) is given in adoption primarily so that he can perform the funeral rites (Shraddha) for his adoptive father and continue the adoptive father's family line. Only males can be adopted in the classical system; female adoption was not recognized. The adoption ceremony must be performed with specific religious rites. The birth parents must consent to the adoption. The child must be of suitable caste. And the adoptive father must not already have a son.

These requirements create significant practical difficulties in the modern context. The requirement that only males can be adopted means that childless Hindu couples cannot legally adopt a daughter. The caste requirement, like the caste requirement in marriage, is contrary to constitutional equality principles. The religious character of the ceremony means that an adoption must be performed in a specific way that may be inaccessible or unfamiliar to many

families. And the absence of any statutory framework for registration and enforcement of adoption leaves the legal status of adoptive children uncertain, particularly in property disputes.

India addressed these problems through the Hindu Adoptions and Maintenance Act of 1956, which codified and rationalized the rules of adoption for Hindus, abolished the exclusion of female adoption, simplified the adoption ceremony requirements, and created a clear statutory framework. Bangladesh needs equivalent legislation.

10.4 Maintenance: Protection Against Destitution

The law of maintenance, which governs the obligation of family members to financially support dependent relatives, is an area of Hindu law that has significant practical importance for the most vulnerable members of the Hindu community: aged parents, widows, separated wives, and children. Under the existing law, Hindu women have a right to claim maintenance from certain male relatives, but the precise scope of this right, the conditions under which it arises, and the mechanisms for its enforcement are all inadequate.

The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946, which applies in Bangladesh, provides that a Hindu wife is entitled to live separately from her husband and to claim maintenance from him on certain grounds: if he is guilty of cruelty, if he has another wife living, if he keeps a concubine, if he has converted to another religion, or if there is any other reasonable cause. The Act provides grounds for separation and maintenance, but these grounds are defined narrowly and do not cover the full range of circumstances in which a wife might legitimately need maintenance.

The maintenance law for Hindu widows is even more limited. A widow is entitled to maintenance from her deceased husband's estate, but the quantum of maintenance and the priority of her claim against other charges on the estate are not clearly defined by statute. In practice, widows often receive inadequate maintenance or are effectively denied it through the pressure of male relatives who control the family property.

The reform agenda for maintenance law should include: a clear statutory right of maintenance for dependent wives, with grounds for claiming maintenance defined broadly enough to cover all circumstances of genuine need; a clear right of maintenance for widows from the husband's estate; a right of maintenance for aged parents from their children; and an effective enforcement mechanism. The Family Courts Ordinance of 1985 provides the primary institutional framework for the enforcement of maintenance claims, but the substantive law governing the quantum and conditions of maintenance is so inadequate that the courts are frequently unable to give effective relief.

CHAPTER ELEVEN: HISTORICAL CONTROVERSIES AND REFORM DEBATES

11.1 The Controversy Over the Hindu Code in India: Lessons for Bangladesh

The debate over the Hindu Code Bills in India in the late 1940s and early 1950s is one of the most fascinating and instructive episodes in the history of South Asian legal reform. It was a debate that brought together questions of religion, gender, constitutionalism, politics, and the nature of tradition in ways that remain deeply relevant to the contemporary situation in Bangladesh.

Dr. B.R. Ambedkar, who drafted the original Hindu Code Bill, was himself a deeply ambivalent figure in relation to the Hindu tradition. As a Dalit who had experienced the full brutality of caste discrimination, he had a profoundly critical perspective on the Dharmasastra tradition that sanctioned caste hierarchy. He saw the reform of Hindu personal law as an opportunity not merely to correct specific injustices but to strike at the theological-legal framework that underpinned caste oppression and gender subordination. He was under no illusions about the resistance this would encounter. In his famous resignation letter in 1951, when the comprehensive Hindu Code Bill was effectively killed in Parliament, Ambedkar wrote with characteristic directness that "to leave inequality between class and class, between sex and sex, which is the soul of Hindu society, untouched and to go on passing legislation relating to economic problems is to make a farce of our constitution and to build a palace on a dung heap."

The opposition to the Hindu Code Bills came from multiple directions. Some, including President Rajendra Prasad himself, objected on the ground that the Constituent Assembly, elected primarily to draft a constitution, did not have the mandate to legislate on personal law. Others objected on religious grounds, arguing that the traditional Hindu law was divinely sanctioned and could not be altered by human legislation without cosmic consequences. Still others, including some within the Indian National Congress, saw the bills as politically unnecessary risks that might antagonize the Hindu majority at a politically sensitive time.

Jawaharlal Nehru's response to this opposition is instructive. He argued that the reform of Hindu law was not an attack on religion but a fulfillment of the constitutional promise of equality: the constitution that India had adopted committed India to a society based on equality and justice, and that commitment could not be realized without reforming laws that discriminated against women in their most personal and intimate affairs. Nehru's argument was essentially the transformative constitutionalist argument: the constitution requires not merely formal equality but substantive equality, and the continuation of discriminatory personal law is incompatible with the constitution's essential character.

This argument is as applicable in the Bangladesh of 2025 as it was in the India of 1951. The Bangladesh Constitution's commitments to equality and the dignity of all citizens are not merely aspirational declarations; they are the foundational principles of the legal order. Their fulfillment requires the reform of laws that discriminate against citizens on grounds of religion and sex.

11.2 The Debate Within the Hindu Community in Bangladesh

The debate over Hindu law reform within the Hindu community in Bangladesh is less prominent than the Indian debate of the 1950s, but it is equally real and equally complex. There are multiple

positions within the community, ranging from those who support comprehensive and rapid reform to those who are deeply resistant to any change in the traditional system.

The progressive position, articulated by lawyers, academics, women's rights activists, and some religious leaders, holds that the current state of Hindu personal law in Bangladesh is not only unjust but is actively harmful to the community's cohesion and survival. By denying women adequate inheritance rights, the current law contributes to the economic vulnerability of Hindu families, to the emigration of Hindu women to India or elsewhere when their situations become untenable, and to the overall marginalization of the community. Reform, on this view, is not merely a matter of justice to individual women but a matter of the community's collective interest and long-term survival.

The conservative position, held by some traditional religious leaders and by those who benefit materially from the current distribution of property rights, argues that the Hindu scriptures and the Dayabhaga tradition should be respected as divinely authorized systems of law that cannot be altered by human legislation. On this view, any legislative reform of Hindu personal law is an interference with religious freedom that the constitution should protect against. Some in this camp also make the sociological argument that the existing property arrangements, while imperfect by modern standards of individual rights, serve important functions in maintaining family solidarity and that any disruption of them could have unpredictable and harmful consequences.

There are also intermediate positions that argue for selective rather than comprehensive reform: reform the most glaring injustices (perhaps the limited estate principle, perhaps the exclusion of daughters from inheritance) while preserving the essential structure of the Dayabhaga system. This incrementalist approach has the political advantage of being less threatening to conservative opinion, but it has the jurisprudential disadvantage of leaving the fundamental structural problems unreformed and may simply recreate new anomalies alongside the ones it corrects.

A particularly interesting dimension of the debate concerns the question of whether reform should come from within or from outside. Some reformers argue that the reform of Hindu personal law should be driven by the Hindu community itself, through a process of community consultation and consensus-building, rather than being imposed by the state legislature. On this view, state legislation imposed without community consent is not true reform but coercion. The counter-argument is that waiting for internal community consensus may mean waiting indefinitely, because the power dynamics within the community, which privilege the voices of male property holders and conservative religious leaders, are unlikely to produce consensus on reforms that would redistribute property and power. The state's role is precisely to intervene when a community's internal processes fail to protect the rights of its most vulnerable members.

11.3 The Sati Abolition as Historical Precedent

The abolition of the practice of Sati (widow self-immolation) by the Bengal Sati Regulation of 1829 under Governor-General William Bentinck is one of the most discussed events in the

history of colonial intervention in Hindu personal law. It offers a complex and still-contested precedent for the relationship between state power, religious tradition, and social reform.

The Sati debate has been analyzed from multiple perspectives. The colonial narrative presented it as a straightforward rescue of Indian women from a barbaric practice. Feminist historians like Lata Mani showed that the colonial debate was actually not primarily about the welfare of women but about the proper interpretation of Hindu scripture: Bentinck's advisors spent considerable effort demonstrating that Sati was not actually required by "authentic" Hindu law, in order to avoid the accusation that the colonial state was interfering with religion. Nationalist historians pointed out that some Indians, most famously Ram Mohan Roy, were themselves leading advocates for abolition, and that the reform movement was not simply imposed from outside.

For the present purposes, the Sati abolition precedent is relevant in several ways. First, it established that the colonial state could and would intervene in Hindu personal law when a practice was considered sufficiently harmful, even over religious objections. Second, it showed that reform could be justified either on grounds of "correct" interpretation of Hindu scripture (Sati is not required by true Hindu law) or on grounds of universal humanitarian principle (no person should be compelled to die on another's funeral pyre). Third, it illustrated the complexity of the relationship between colonial state power and indigenous reform movements, a relationship in which the lines between imposition and collaboration are rarely clear.

The contemporary parallel, while less dramatic, is structurally similar. The state of Bangladesh can intervene in Hindu personal law to reform discriminatory inheritance rules, just as the colonial state intervened to abolish Sati. The justification for intervention can be framed in Hindu scriptural terms (the principle of gender equality is itself a Dharmic principle, as several ancient texts affirm), in constitutional terms (Articles 27 and 28 require equal treatment), or in human rights terms (CEDAW and the ICCPR require the elimination of gender discrimination in family law). The lesson of the Sati abolition is that reform is possible, that the religious argument against reform is not insuperable, and that a combination of political leadership and intellectual argument can overcome conservative resistance.

CHAPTER TWELVE: THE ENEMY PROPERTY ACTS AND THE LEGAL DISPOSSESSION OF HINDUS

12.1 The Vested Property Acts: A Systematic Dispossession

No account of the legal situation of Hindus in Bangladesh would be complete without a discussion of the Vested Property Acts and their devastating consequences. This is a dimension of the legal treatment of the Hindu community that is distinct from but deeply intertwined with the question of Hindu personal law reform: it concerns not the internal rules of Hindu family law but the external legal framework through which vast quantities of Hindu-owned property were appropriated by the state.

The story begins in 1965, when war broke out between India and Pakistan following the Indo-Pakistani conflict over Kashmir. The Government of Pakistan declared many properties owned by Indian nationals as "enemy property" and placed them under government control. After the 1965 war ended, many Hindu residents of East Pakistan, even those who were Pakistani nationals, found that their property had been declared enemy property under this legislation on the ground that they had Indian connections of various kinds. The practical application of these rules was extremely broad and their implementation was often corrupt, with properties being declared "enemy property" through spurious or manufactured connections with India.

After 1971, the Bangladesh government inherited the enemy property legislation and, critically, failed to return the properties to their rightful owners. Instead, the legislation was renamed: the Enemy Property Act became the "Vested Property Act" under the Vested and Non-Resident Property (Administration) Act of 1974. The renaming was significant: after the creation of Bangladesh as a secular state, it was no longer appropriate to speak of "enemy property" defined by nationality, but the fiction of "vested property" allowed the state to maintain its control over properties that had been wrongfully taken. Estimates of the total area of land affected vary enormously, but credible scholarly assessments suggest that millions of acres of land that had belonged to Hindus were lost under this legislation.

The 2001 Vested Properties Return Act was intended to address this injustice, and it provided for the return of properties still held by the government to their rightful owners. However, the implementation of the Act has been widely criticized as inadequate, corrupt, and biased. The processes for identifying rightful owners and establishing claims to returned property have been complex, expensive, and often inaccessible to the communities they were supposed to serve. Many properties have not been returned. Some have been returned but then re-seized through other mechanisms.

The Vested Property issue is directly relevant to the question of Hindu personal law reform because the combination of discriminatory inheritance law and the loss of land through the Vested Property Acts has created a situation of profound economic insecurity for many Hindu families in Bangladesh. A Hindu widow who has lost her husband's land to the Vested Property Acts and who, under the existing inheritance law, holds only a life estate in whatever property remains, is in an extremely precarious position. She has neither the full ownership of what she has legally inherited nor the prospect of recovering what has been illegally taken. Reform of inheritance law, while urgently needed, cannot by itself address the full depth of the legal and economic injustice that this combination has produced.

12.2 Property Grabbing, Land Disputes, and the Rule of Law

Beyond the systematic dispossession effected by the Vested Property Acts, Hindu-owned property in Bangladesh has been vulnerable to informal or semi-formal property grabbing throughout the post-independence period. The pattern is familiar: after periods of communal violence or political uncertainty, Hindu families, frightened for their safety, flee or emigrate to India, leaving their property behind. That property is then occupied, often by politically connected persons, sometimes with the connivance of local officials, and the legal processes by

which the rightful owners might recover it are too slow, too expensive, and too politically constrained to provide effective redress.

The October 2024 report of incidents, including a complaint by 21 Hindu families about the grabbing of 1.5 acres of land in Patuakhali district, is one small example of a large and pervasive phenomenon. In many cases, the family's legal right to the property is clear, but the practical means of enforcing that right in the face of powerful local interests and a corrupt or intimidated police and judicial system are inadequate. Reform of Hindu personal law, while important, must be understood as part of a broader program of reform that includes the rule of law more generally, the reform of land administration, the improvement of access to justice, and the political protection of minority communities.

This broader context is important for the jurisprudential analysis of Hindu law reform because it suggests that the reform of substantive legal rules, while necessary, is not sufficient. The gap between formal rights and their practical realization is enormous in Bangladesh, and any reform program that focuses only on changing the formal rules without addressing the institutional infrastructure for their implementation will have limited real-world effect. Mandatory registration of Hindu marriages, for example, is valuable only if the registration system is accessible and efficient. Reform of inheritance rules is valuable only if the courts that apply those rules are accessible, impartial, and effective. And all of this is valuable only if the broader rule of law, including the protection of property rights against both state appropriation and private seizure, is functioning.

CHAPTER THIRTEEN: THE 2024 REVOLUTION AND THE REFORM MOMENT

13.1 The July Uprising and Its Constitutional Implications

The events of July and August 2024 in Bangladesh, which culminated in the resignation of Prime Minister Sheikh Hasina on August 5 and the installation of the interim government of Muhammad Yunus, represent the most significant political upheaval in Bangladesh since 1971. The student-led uprising, which began as a protest against a government quota system for civil service jobs and rapidly expanded into a broader challenge to the Hasina government's legitimacy, resulted in a fundamental change of government that the interim administration has framed as the beginning of a new constitutional era.

For the purposes of Hindu law reform, the significance of the July uprising is threefold. First, the uprising was explicitly animated by principles of equality, justice, and the rights of all citizens, principles that are directly relevant to the treatment of religious minorities. The "July Charter" that emerged from the uprising contains commitments to inclusive citizenship and the protection of minority rights that provide a political and rhetorical framework within which Hindu law reform can be advanced.

Second, the unprecedented legislative activity of the interim government, which has promulgated dozens of ordinances covering a wide range of legal domains, demonstrates both the capacity of the legal system for rapid reform and the willingness of the current administration to use that capacity. If the political will exists, there is no institutional obstacle to the promulgation of a comprehensive Hindu Personal Law Ordinance addressing the most urgent reform needs.

Third, the violence against the Hindu community in the aftermath of the uprising creates an urgent context for legal reform. When the physical security and property rights of Hindu citizens are under threat, the adequacy of the legal framework protecting those rights becomes a matter of immediate practical importance. A state that professes commitment to the rule of law and to the rights of all citizens cannot credibly make that claim while maintaining a body of personal law that treats Hindu women as less than full legal persons.

13.2 The New Constitutional Discourse and Hindu Rights

The political discourse that has accompanied the July uprising and its aftermath has been characterized by a new emphasis on rights, constitutionalism, and the rule of law. The interim government's reform agenda, while primarily focused on the more immediately politically salient issues of electoral reform, anti-corruption measures, and transitional justice, has also included significant legal reforms across a range of domains.

In this context, the reform of Hindu personal law can be framed not as a special-interest demand from a religious minority but as an aspect of the broader constitutional reform agenda. The argument would be: a reformed Bangladesh, committed to the rule of law and to the equal rights of all citizens, cannot maintain a body of personal law that discriminates against its Hindu citizens on grounds of sex and religion. Reform of Hindu personal law is not a favor to the Hindu community; it is a requirement of the constitutional principles to which the new Bangladesh is committed.

This framing has the advantage of positioning Hindu law reform as part of the mainstream reform agenda rather than as a minority community demand. It also has the advantage of connecting the personal law reform to the broader constitutional reform discussions that are underway, discussions about the structure of the constitution, the nature of the state, and the rights of citizens. In a moment when Bangladesh is reconsidering its constitutional identity, the question of how it treats its religious minorities in the domain of personal law is a question about the kind of constitutional order Bangladesh wants to be.

The "asymmetric citizenship" that sociologists have identified as the practical condition of Bangladesh's Hindu community is fundamentally incompatible with the vision of inclusive, rights-based citizenship that the July uprising articulated. The student protesters who faced security forces in the streets of Dhaka in July and August 2024 were not fighting for a Bangladesh in which eight percent of the population lives under archaic, discriminatory personal law that the other ninety-two percent does not have to contend with. They were fighting for a Bangladesh of equal citizens, governed by just laws, with equal access to the protections that law is supposed to provide.

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13.3 The Role of Civil Society and Legal Advocacy

The reform of Hindu personal law in Bangladesh will not come about through the goodwill of the state alone. It requires sustained advocacy by civil society organizations, legal reformers, women's groups, human rights lawyers, and members of the Hindu community itself. The experience of reform movements in other South Asian countries demonstrates that legal reform is typically the product of a combination of legislative initiative and sustained external pressure from organized advocacy.

Organizations like Ain O Shalish Kendra (ASK), the Bangladesh Mahila Parishad (BMP), and the Bangladesh Legal Aid and Services Trust (BLAST) have historically played important roles in providing legal services to vulnerable communities, including Hindu women, and in advocating for legal reform. Their expertise, their institutional capacity, and their connections to international human rights networks make them essential partners in any serious reform effort.

The Law Commission of Bangladesh, whose 2006 and 2012 proposals for Hindu personal law reform remain unimplemented, provides an important institutional resource. Its proposals, though now somewhat dated, provide a solid foundation on which updated reform legislation can be built. The Commission should be asked to revisit its proposals in light of the Indian and Nepalese reform experience since 2012, and to produce updated recommendations that can serve as the basis for legislation.

The legal academy, including the law faculties of Bangladesh's universities, has a role to play in the intellectual preparation of reform. The production of scholarly commentary on Hindu law, the development of jurisprudential arguments for reform, the training of lawyers who understand the specificities of Hindu personal law, and the creation of a public discourse about the injustices of the current system are all contributions that legal academics can make. This treatise is one attempt to contribute to that intellectual preparation.

CHAPTER FOURTEEN: TOWARD A PHILOSOPHY OF REFORM

14.1 The Guiding Principles of Reform

Having examined the philosophical foundations, historical context, political dynamics, and specific injustices of Hindu law in Bangladesh, we are in a position to articulate the guiding principles that should shape the reform effort.

The first principle is the priority of equality and dignity. All reform measures must be guided by the fundamental commitment to the equal dignity of all persons, regardless of sex, caste, or class. This means that any legal rule that denies women equal rights with men, or that treats lower-caste Hindus differently from upper-caste Hindus, must be reformed. The principle of equal dignity is not merely a constitutional requirement; it is a moral imperative that is itself deeply rooted in the best of the Hindu tradition.

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The second principle is engagement with rather than rejection of the tradition. The reform of Hindu law should not be undertaken in a spirit of hostility to the Hindu tradition but in a spirit of critical engagement with it. The tradition contains resources for reform: philosophical principles of gender equality, theological commitments to the equal spiritual worth of all persons, historical precedents of legal adaptation to changing circumstances. These resources should be deployed in the service of reform, and reform should be framed wherever possible as the fulfillment rather than the rejection of the tradition's deepest commitments.

The third principle is accessibility and clarity. Reform legislation must be written in plain language, accessible to ordinary citizens without specialist legal training, and available in Bengali as well as English. The goal of codification is not merely to collect existing rules in a single place but to transform the law into an instrument that the people it governs can understand and use.

The fourth principle is comprehensiveness. Piecemeal reform, however well-intentioned, tends to produce anomalies and inconsistencies. The reform of Hindu personal law in Bangladesh should be comprehensive, addressing all the major domains of personal law, marriage, divorce, inheritance, adoption, maintenance, guardianship, in a single legislative exercise. The Indian model of four separate but coordinated Acts, or ideally a single comprehensive Family Code, provides the model to follow.

The fifth principle is community participation. The reform process should include genuine consultation with the Hindu community, particularly its most vulnerable members, including women, Dalit Hindus, and rural communities. Reform that is imposed from above without community input is likely to be resisted and may not achieve the social transformation it aims at. At the same time, community consultation must be structured in a way that gives voice to all members of the community, not merely its most powerful or vocal representatives.

The sixth principle is enforceability. Legal rules that cannot be enforced are not merely useless; they are actively harmful, because they create expectations that are then disappointed and may be used to legitimize the status quo by pointing to formal rights that exist on paper. Every reform measure must be accompanied by a realistic assessment of the institutional capacity needed to enforce it and, where necessary, measures to build that capacity.

14.2 The Immediate Reform Priorities

Drawing on the analysis of specific injustices in earlier chapters, we can identify the following as the most immediate legislative priorities for Hindu law reform in Bangladesh.

The abolition of the limited estate for female heirs is the single most important immediate reform. It affects the most women in the most direct and consequential way. It is clearly required by constitutional equality principles. It has been successfully implemented in India for nearly seventy years without any of the dire consequences that its opponents predicted. And it can be achieved through a relatively brief statutory amendment that does not require a comprehensive restructuring of the entire Dayabhaga system.

The mandatory registration of Hindu marriages is the second most immediate priority. The Hindu Marriage Registration Act of 2012, which makes registration voluntary, should be amended to make registration mandatory, with appropriate penalties for non-compliance and with exemptions for marriages that cannot be registered due to genuine practical difficulties. Mandatory registration would address the evidential difficulties that currently plague the courts in determining whether a Hindu marriage took place, and would provide a statutory record that protects the rights of both parties.

The introduction of statutory grounds for divorce for Hindus is the third priority. This requires more extensive legislative work than the first two priorities, because it involves not merely amending existing provisions but creating an entirely new legal regime. The Indian Hindu Marriage Act of 1955 provides the most direct model, and its divorce provisions, with appropriate modifications for the Bangladesh context, should serve as the basis for a Bangladeshi statute.

The extension of the widow's property rights to agricultural land, by removing the exclusion contained in the Hindu Women's Rights to Property Act of 1937, is a specific targeted reform that would have significant practical effect in rural Bangladesh, where agricultural land is the primary form of wealth.

The legislative recognition of female adoption, bringing Hindu adoption law in Bangladesh into line with India's 1956 Act, is a reform that would affect a relatively small number of families directly but that would remove a significant symbolic injustice from the law.

14.3 The Long-term Vision

Beyond the immediate legislative priorities, a long-term vision for Hindu law reform in Bangladesh must address the deeper structural questions about the relationship between the Hindu personal law system and the broader legal order. Should Bangladesh move toward a uniform civil code, applicable to all citizens regardless of religion? This is the direction that the July Charter's commitment to inclusive citizenship might seem to point, but it is a direction that would require extraordinary political will and careful management of religious community concerns.

A more pragmatic long-term vision might be what we could call "convergent reform": the reform of all the major personal law systems in Bangladesh (Muslim, Hindu, Christian, Buddhist) in the direction of shared principles of equality, dignity, and the rights of all family members, without necessarily requiring complete uniformity. This approach recognizes the value of legal diversity and community autonomy while insisting that certain minimum standards of justice apply to all communities. It is an approach that reflects the insights of legal pluralism theory, which has moved beyond simple opposition between uniformity and diversity to explore the conditions under which plural legal systems can coexist with genuine commitments to justice for all.

The institutional architecture for this long-term vision includes not merely legislative reform but the development of specialized family courts with expertise in personal law matters, legal aid

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structures that make the law genuinely accessible to poor and rural communities, community-based legal education programs that inform Hindus of their rights, and sustained judicial training in the reformed law. Legal reform without institutional development is a castle built on sand.

CHAPTER FIFTEEN: JURISPRUDENTIAL PHILOSOPHY AND THE FUTURE OF HINDU LAW IN BANGLADESH

15.1 Legal Positivism and Its Limits in the Personal Law Context

The jurisprudential analysis of Hindu law in Bangladesh cannot avoid confronting the limitations of legal positivism in this context. Legal positivism, in its most influential formulations by John Austin and H.L.A. Hart, defines law as commands issued by a sovereign or as rules that satisfy certain formal criteria of validity. Applied to personal law in Bangladesh, a positivist analysis would focus on identifying the formally valid legal rules, the statutes, the judicial decisions, the recognized customs, that constitute the positive law governing Hindus.

But this positivist analysis immediately runs into difficulties. The "rules" of Hindu personal law in Bangladesh do not come neatly packaged as formal legislation. Many of the most important rules are derived from texts written in Sanskrit in the twelfth century, translated into English in the nineteenth century, and applied by courts using those translations as authoritative. The content of these rules is genuinely uncertain in many cases, disputed by scholars, variably applied by courts, and often unknown to the people they govern. The formal validity of these rules, in the positivist sense, is itself contested: are they valid because they have been recognized by the colonial courts and their successors, because they express the authentic Hindu legal tradition, or because they have been accepted by custom?

The limitation of legal positivism in this context is its inability to engage with the legitimacy question. Even if we can identify what the formal rules of Hindu personal law in Bangladesh are, we face the more urgent question of whether they are just rules that merit compliance and enforcement. Legal positivism, in its pure form, insists that the question of what the law is is separate from the question of whether the law is just, and that courts should apply the law as they find it rather than as they think it should be. But in the context of a body of law as archaic, complex, and systematically discriminatory as Hindu personal law in Bangladesh, this positivist restraint can itself become a form of complicity. Courts that mechanically apply the limited estate rule to a widow's inheritance because it is "the law" are participating in the reproduction of injustice, even if they are technically right about what the positive law says.

15.2 Natural Law Resurrection: The Contemporary Relevance

The natural law tradition, which connects legal authority to moral legitimacy, offers a more satisfying framework for the analysis of Hindu law reform than pure legal positivism. As we noted in Chapter Two, there are deep structural similarities between the Hindu concept of Dharma and the natural law concept of a moral order that positive law ought to reflect. Both

traditions hold that law derives its authority, at least in part, from its conformity to a higher normative standard.

Contemporary natural law theory, particularly the "new natural law" of John Finnis and his collaborators, grounds the higher normative standard in a set of "basic goods," things like life, knowledge, friendship, practical reasonableness, and justice, that intelligent human beings can recognize as genuinely valuable without any specifically religious revelation. A reform advocate for Hindu law in Bangladesh can draw on this framework to argue that the denial of inheritance rights to Hindu women violates their basic good of practical reasonableness, their capacity to be genuine agents of their own lives, making their own decisions and pursuing their own goals; that it violates the basic good of justice, understood as the giving to each person what they are due; and that a legal system that systematically undermines these basic goods lacks the moral authority to command the compliance of its subjects.

The natural law framework also provides a basis for arguing that reform is not merely permissible but morally obligatory. If the state is bound by natural law to promote the basic goods of its citizens and to restrain laws that undermine them, then the maintenance of discriminatory inheritance rules is not merely a policy failure but a moral wrong for which the state bears responsibility. This is a stronger claim than the constitutional equality argument, because it grounds the obligation to reform not in the contingent provisions of a particular national constitution but in the universal demands of justice that apply to all states regardless of their constitutional provisions.

15.3 Postcolonial Jurisprudence and the Decolonization of Hindu Law

Postcolonial jurisprudence, as developed by scholars including Upendra Baxi, Partha Chatterjee, Ratna Kapur, and others working in the South Asian context, provides perhaps the richest and most contextually appropriate theoretical framework for the analysis of Hindu law reform in Bangladesh.

Postcolonial jurisprudence begins with the recognition that the legal systems of formerly colonized societies are themselves colonial constructs, products of the encounter between European imperial power and indigenous social formations. This does not mean that all inherited legal institutions are simply bad or that they should be wholesale rejected; it means that they should be examined critically, from the standpoint of those who were marginalized by the colonial legal order, and reformed in ways that genuinely serve the interests and dignity of all members of the post-colonial society.

Applied to Hindu law in Bangladesh, the postcolonial perspective insists that the inherited Dayabhaga system is not simply "traditional Hindu law" but colonial Hindu law: a system shaped by British administrative needs, Orientalist intellectual frameworks, and the selective privileging of certain texts and interpretations over others. The colonial construction of Hindu law, as we have analyzed in Chapter Four, had the effect of freezing a particular configuration of social relationships, specifically those that benefited upper-caste male property holders, and giving them the authority of "law." True decolonization of the Hindu law requires subjecting this

inherited system to critical scrutiny from the standpoint of those it most disadvantaged: women, lower-caste Hindus, and the urban poor.

The decolonization of Hindu law does not mean the rejection of the ancient tradition. It means recovering from within the tradition the resources for a more equitable legal order, and supplementing those resources with the insights of contemporary human rights principles and constitutional equality. The feminist Hindu scholars who have argued that the tradition's deepest commitments, to the equal spiritual worth of all persons, to the obligation to protect the vulnerable, to the Dharmic imperative of justice, actually support rather than oppose gender-equal inheritance rules are engaged in a decolonial project: recovering an alternative reading of the tradition that the colonial construction suppressed in favor of its hierarchical patriarchal version.

15.4 The Intersubjectivity of Legal Reform: Recognition and Identity

A dimension of the philosophy of legal reform that deserves explicit attention is the relationship between law and identity. Legal philosopher Axel Honneth, building on Hegel's theory of recognition, argued that the denial of recognition, the treatment of a person as less than a full moral and legal subject, is a fundamental harm that inflicts not merely material disadvantage but psychological and social damage. The person who is denied recognition is not merely disadvantaged; they are systematically misrecognized, treated as if their personhood is of lesser worth than that of others.

Applied to Hindu law in Bangladesh, this perspective suggests that the inadequacy of Hindu women's inheritance rights is not merely an economic problem but a recognition problem. When the law says that a Hindu woman holds inherited property only as a life estate, while her Muslim counterpart holds it absolutely, the law is communicating a message about their relative worth as legal subjects. When the law says that a Hindu daughter cannot inherit equally with her brother, it is communicating a message about the relative worth of daughters and sons in the eyes of the legal order. These messages of relative worth, communicated through the medium of law, inflict real harm on those who receive them, independently of the material consequences of specific legal rules.

The recognition framework also helps to explain why legal reform matters even in cases where the formal legal rules may not be practically enforced. Even if a particular discriminatory rule rarely reaches the courts because most families resolve their property disputes informally, the existence of the rule in the law communicates a message about the community's official valuation of women's worth. Reform of the rule changes the message: it communicates that in the Bangladesh of the present and the future, Hindu women are full legal persons, entitled to equal treatment as a matter of principle, not merely as a matter of grace or social convention.

CONCLUSION TO PART ONE

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The Work Ahead

In this first part of our sixteen-part treatise, we have laid the intellectual foundations for a comprehensive engagement with the question of Hindu law reform in Bangladesh. We have examined the philosophical roots of the Hindu legal tradition in the concept of Dharma and the source hierarchy of Shruti, Smriti, Nibandha, and custom. We have analyzed the specific character of the Dayabhaga School, its distinctive doctrines of inheritance, the position of women within its framework, and its relationship to the broader Hindu legal tradition. We have traced the colonial construction of Hindu law in Bengal, examining how British administrative needs and Orientalist scholarship shaped the body of law that Bangladesh inherited at independence. We have situated this inherited law within the constitutional framework of Bangladesh, analyzing the provisions of the constitution that bear on personal law, the role of the Law Commission, and Bangladesh's international human rights obligations. We have examined the political economy of non-reform, analyzing the structural factors that have prevented legislative action over more than fifty years. We have surveyed the legal and jurisprudential frameworks, from Hart and Dworkin to transformative constitutionalism and postcolonial jurisprudence, that illuminate different aspects of the reform challenge. And we have identified the specific reforms that are most urgently needed.

What we have established, through this wide-ranging analysis, is that the reform of Hindu personal law in Bangladesh is not merely a technical legal matter but a moral imperative, a constitutional requirement, an international human rights obligation, and a political necessity. It is a moral imperative because the systematic denial of equal rights to thirteen million citizens on grounds of their religion and sex is a fundamental injustice that no civilized legal order can indefinitely maintain. It is a constitutional requirement because the Bangladesh Constitution's commitments to equality and dignity cannot be reconciled with the continued maintenance of a discriminatory personal law system. It is an international human rights obligation because Bangladesh's commitments under CEDAW and the ICCPR require the elimination of gender discrimination in family law. And it is a political necessity because the vision of an inclusive, rights-based Bangladesh that the July uprising of 2024 articulated cannot be realized while eight percent of the population lives under archaic, discriminatory law.

The fifteen parts that follow this first part will examine specific domains of Hindu personal law in much greater depth, analyze the judicial decisions that have shaped the law's application, compare the Bangladesh position with developments in India, Nepal, and other jurisdictions, and develop detailed proposals for reform. They will also examine the social and economic context in which the law operates, the practical barriers to access to justice that affect the Hindu community, and the institutional reforms needed to make legislative change effective in practice. They will engage with the theological and philosophical arguments against reform, attempting a genuine dialogue with conservative positions rather than merely dismissing them. And they will develop a comprehensive vision of what a reformed Hindu personal law of Bangladesh might look like, grounded in the principles articulated in this first part.

The work is ambitious. The subject is vast. The stakes are high. The need is urgent. The moment, as Bangladesh stands at a crossroads in its constitutional and political history, is perhaps the most

propitious that has existed in the more than fifty years since independence. The pages that follow are offered in the conviction that ideas matter, that jurisprudential argument contributes to political change, and that the intellectual preparation of reform is itself an act of justice to those who have too long waited for the law to keep its promises.

BIBLIOGRAPHY AND FURTHER READING FOR PART ONE

The following works have been drawn on or are recommended for further reading in connection with the themes developed in this first part. They are grouped thematically rather than alphabetically to assist readers in pursuing particular lines of inquiry.

On the philosophical foundations of Hindu law and the concept of Dharma: Pandurang Vaman Kane's History of Dharmasastra (five volumes, Bhandarkar Oriental Research Institute) remains the indispensable scholarly reference. Wendy Doniger's The Laws of Manu (Penguin Classics translation) is the most accessible English version of the Manusmriti with scholarly commentary. Donald Davis Jr.'s The Spirit of Hindu Law (Cambridge University Press, 2010) provides a modern jurisprudential analysis of the Dharmasastra tradition. Ludo Rocher's work on the Dayabhaga, particularly his collaborative edition with Julius Jolly, provides essential background on the Dayabhaga text itself.

On the colonial construction of Hindu law: Lata Mani's Contentious Traditions: The Debate on Sati in Colonial India (University of California Press, 1998) is essential for understanding the colonial-period debates about Hindu law and women. Nandini Bhattacharyya-Panda's Appropriation and Invention of Tradition: The East India Company and Hindu Law in Early Colonial Bengal (Oxford University Press, 2008) provides the most detailed account of the colonial construction of Dayabhaga law in Bengal. Marc Galanter's Competing Equalities: Law and the Backward Classes in India, while focused on India, contains important analysis of the structure of personal law systems in South Asia.

On women's rights under Hindu law: Flavia Agnes's Law and Gender Inequality: The Politics of Women's Rights in India (Oxford University Press, 1999) is the most comprehensive analysis of women's rights under Hindu personal law in the Indian context. Uma Chakravarti's Gendering Caste: Through a Feminist Lens (Stree, 2003) situates the gender dimensions of Hindu law within the broader structure of caste society.

On legal pluralism and personal law: John Griffiths' foundational article "What Is Legal Pluralism?" (Journal of Legal Pluralism, 1986) remains essential. Franz and Keebet von Benda-Beckmann's work on legal pluralism in developing country contexts is collected in multiple volumes and provides the theoretical framework most directly relevant to the Bangladesh context. Brian Tamanaha's general jurisprudence, particularly A General Jurisprudence of Law and Society (Oxford University Press, 2001), provides a sophisticated analysis of the relationship between legal pluralism and the rule of law.

On transformative constitutionalism: Karl Klare's "Legal Culture and Transformative Constitutionalism" (South African Journal on Human Rights, 1998) is the founding text of the transformative constitutionalism movement. Sandra Liebenberg's Socio-Economic Rights: Adjudication Under a Transformative Constitution (Juta, 2010) shows how transformative constitutionalism is applied in practice. In the South Asian context, Upendra Baxi's The Future of Human Rights (Oxford University Press, multiple editions) provides the most comprehensive account of human rights jurisprudence from a postcolonial perspective.

On the situation of Hindus in Bangladesh: Meghna Guhathakurta and Willem van Schendel (eds.), The Bangladesh Reader: History, Culture, Politics (Duke University Press, 2013) provides essential context. The reports of international organizations including USCIRF, (Human Rights Watch), and Amnesty International on the situation of religious minorities in Bangladesh, published regularly from 2023 to 2025, document the contemporary context of communal tension and legal inadequacy. Bipasha Rani Paul's essay "Legal Reforms in Hindu Law Is a Social Demand: Bangladesh Perspective" (Eurasia Review, January 2025) provides a recent and authoritative practitioner's perspective on the reform agenda from within the Bangladeshi legal profession.

On the reform of Hindu personal law in comparative perspective: Werner Menski's Hindu Law: Beyond Tradition and Modernity (Oxford University Press, 2003) provides the most comprehensive comparative analysis of Hindu law reform across different jurisdictions. Archana Parashar's Women and Family Law Reform in India (Sage, 1992) analyzes the Indian reform experience. The National Civil Code of Nepal 2017, available in official English translation, illustrates the most recent comprehensive reform of a Hindu-tradition personal law system in South Asia.

The Second Part of this treatise will examine in depth the law of Hindu marriage in Bangladesh: its nature, its essential and ceremonial requirements, its validity and invalidity, the specific reform of mandatory registration, the introduction of grounds for dissolution, the problem of caste restrictions, and the comparative analysis of the Indian Hindu Marriage Act of 1955 as the primary model for legislative reform.

PART TWO

The Locked Gate: Hindu Marriage Law in Bangladesh: Doctrinal Architecture, Philosophical Controversies, Sacramental Theory, the Absence of Divorce, Registration, Caste, Ceremony, Comparative Analysis, and the Path to Reform

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PREFACE TO PART TWO

If Part One of this treatise established the philosophical, historical, and jurisprudential foundations of the problem of Hindu law in Bangladesh, Part Two enters the interior of the system through what is perhaps its most intimate and consequential domain: the law of marriage. Marriage is, in virtually every legal system in the world, the institution from which most other legal consequences flow. It determines legitimacy of children, rights of inheritance, obligations of maintenance, custody of offspring, and the very architecture of the family unit within which most human beings spend their lives. To understand a society's marriage law is, in very large measure, to understand how that society conceives of persons, of families, of gender, of permanence, and of the relationship between the sacred and the secular.

In the context of Hindu law in Bangladesh, the marriage question is not merely a doctrinal puzzle or a technical legal problem. It is a human crisis of immense proportions. As the legal practitioners and analysts writing in 2025 and 2026 have documented, Bangladeshi Hindu women live in a legal world where marriage is a sacrament that can never be dissolved, where no matter how brutal or abandoning a husband may be, the wife has no legal mechanism to end the union and begin her life anew, where no matter how transparently clear it is to everyone in the community that a marriage has collapsed, the courts cannot recognize its dissolution. It is a world in which a man can walk out of a marriage, take another woman, have children with her, and face no legal consequence, while his abandoned wife remains trapped by the legal indissolubility of a bond that has been physically and emotionally severed by his own conduct.

This is not a theoretical injustice. It is a lived reality for women like the twenty-two-year-old quoted in international press coverage of the issue, who was abandoned by an abusive husband and who asked, in words that strip the philosophical debate down to its most human core: "Is it a crime to be born a Hindu girl?" The answer that the law of Bangladesh implicitly gives her is troublingly close to yes.

This second part of the treatise examines the Hindu law of marriage in Bangladesh comprehensively and critically. We begin with the jurisprudential and philosophical debate about the nature of Hindu marriage itself: is it a sacrament, a contract, or a hybrid institution? We then examine the essential requirements for a valid Hindu marriage under the Dayabhaga system as applied in Bangladesh: capacity, ceremony, consent, caste. We analyze the colonial legislation that has provided the thin statutory framework within which Hindu marriages in Bangladesh have been governed. We examine the Hindu Marriage Registration Act of 2012, its scope, its limitations, and the arguments for making registration mandatory. We devote extended analysis to the absence of divorce and its consequences for women, men, children, and the community as a whole. We examine the law of conjugal rights and separation. We compare the Bangladesh position with the much more developed and reformed law of India, looking specifically at the Hindu Marriage Act of 1955 and its subsequent judicial development, including the important Supreme Court decision of April 2024 reaffirming the sacramental character of the marriage ceremony while operating within a modern statutory framework. And we conclude with a comprehensive set of proposals for legislative reform that would address the most urgent

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injustices while remaining sensitive to the traditions and community concerns that any sustainable reform must accommodate.

CHAPTER ONE: THE NATURE OF HINDU MARRIAGE: SACRAMENT, CONTRACT, OR SOMETHING MORE?

1.1 The Foundational Question

Few questions in the jurisprudence of Hindu personal law have attracted more sustained scholarly and judicial attention than the question of whether Hindu marriage is a sacrament or a contract. The question is not merely academic. The answer one gives to it determines, at a fundamental level, what consequences should attach to marriage, what remedies should be available when it breaks down, and how the relationship between the parties should be understood by law. A sacrament is by definition a religious institution with divine sanction, typically understood to be indissoluble or at least dissoluble only under extraordinary circumstances defined by religious authority. A contract is a consensual arrangement between legal persons, modifiable and terminable in accordance with the agreement of the parties and the requirements of justice. The difference between these two characterizations has practical consequences of the most far-reaching kind.

The classical Hindu tradition, as expressed in the Dharmasastra literature, conceived of marriage unambiguously as a samskara: a sacrament, one of the sixteen rites of passage (shodasa samskaras) through which a Hindu male passes in the course of his life. The Manusmriti devotes extensive attention to the forms and requirements of marriage, treating it as a religious institution of cosmic significance. The very terminology of the ancient texts reflects this understanding: marriage is referred to as vivaha, a term that connotes the "carrying away" of the bride from her natal family into her husband's, an act with profound religious significance; as panigrahanam, the "grasping of the hand," which signifies the formal transfer of the bride under divine witness; and as the beginning of the grihastha ashrama, the householder stage of life, which is one of the four ashramas or life stages that define the path of Dharmic living for a Hindu.

The sacramental character of Hindu marriage, in the classical understanding, has three essential implications. First, the marriage is permanent: the bond created by the performance of the required ceremonies is conceived as enduring beyond death itself, binding the couple through multiple lifetimes. Second, the marriage is indissoluble by purely human agency: because it was created by divine sanction through religious ceremony, it cannot be dissolved by the mere will of the parties. Third, the ceremonies themselves have constitutive force: it is not the agreement of the parties that creates the marriage but the performance of the required ritual acts, particularly the Saptapadi or seven steps around the sacred fire. Without the ceremonies, there is no marriage, regardless of the mutual intention of the parties. With the ceremonies, there is a marriage, regardless of subsequent developments.

The contractual conception of marriage, derived from English and Western legal traditions and increasingly influential in South Asian legal thought through the colonial encounter, conceives of marriage as a consensual agreement between two persons capable of entering into legal relations. The key elements are the free and mutual consent of the parties (or in systems that recognize parental authority in marriage arrangements, the formal consent of guardians), the capacity to marry (typically age and absence of subsisting marriage), and the absence of prohibited relationships. Contract law also, crucially, provides for the dissolution of agreements when they break down or when the parties agree to terminate them. The application of contractual thinking to marriage has historically been associated with the recognition of divorce, because if marriage is a contract, the question of what should happen when the contract has been irreparably breached or when both parties wish to terminate it becomes urgent and answerable.

1.2 The Vedic and Smriti Sources on the Nature of Marriage

The ancient Hindu textual sources on marriage are more complex and internally diverse than a simple summary of the "sacramental conception" might suggest. Understanding this complexity is important for two reasons: it provides the intellectual material for a reform argument from within the tradition, and it demonstrates that the rigid sacramentalism that is often presented as the "authentic" Hindu position on marriage is itself a historically produced and interpretively contested construction.

The Vedas, the earliest and most authoritative sources in the Hindu textual hierarchy, contain relatively little that constitutes detailed marriage law in the technical sense. The Rigveda contains hymns associated with the wedding ceremony, most famously the wedding hymn in Book Ten that celebrates the union of Surya (the daughter of the sun god) with the Ashvins. These hymns establish the cosmic context of marriage as a sacred union, but they do not supply the kind of detailed legal rules that later Smriti texts developed. What the Vedic sources do establish is the foundational conception of marriage as a religious act performed under divine witness.

The Grhyasutras, the ancient manuals for domestic religious ceremonies, provide the most detailed early accounts of the marriage ceremony itself. They specify the essential rites, including the Vivaha homa (the sacred fire ceremony), the Panigrahanam (grasping of the hand), and the Saptapadi (seven steps). The Grhyasutras make clear that these rites are not merely symbolic but constitutive: they are what creates the marriage in the eyes of both law and religion. The ancient case law reported in the Smritis and commentaries consistently reflects this understanding: marriage questions were resolved by reference to whether the essential ceremonies had been properly performed.

The Manusmriti, the most influential of the legal Smritis, provides an extended treatment of marriage in its third and ninth chapters. Manu recognizes eight forms of marriage, ranging from the Brahma form (gift of a daughter to a suitable groom, the most prestigious) to the Paisacha form (marriage by capture or seduction, the least prestigious). This taxonomy reveals that the ancient tradition was in fact quite pragmatic about the diversity of actual marriage arrangements, recognizing forms that would strike modern readers as more contractual (the Gandharva form,

for instance, which is essentially marriage by mutual consent without parental involvement) alongside those that are unambiguously sacramental. The recognition of the Gandharva form as a valid, if lower-prestige, form of marriage has been cited by reformers as evidence that the tradition itself acknowledges the legitimacy of consensual union.

The Narada Smriti, one of the more liberal of the ancient legal texts, contains a passage that has attracted significant scholarly attention in the context of divorce reform: it recognizes five grounds on which a woman may "abandon" her husband and take another, including his disappearance, his death, his taking of monastic vows, his impotence, and his degradation (loss of caste). The Parasara Smriti, which some commentators regard as more authoritative for the current age (the Kali Yuga), similarly provides for a woman to remarry in circumstances of the husband's death, disappearance, religious renunciation, impotence, or moral degradation. These provisions have been interpreted differently by different scholars: some see them as recognizing a right of divorce in all but name; others argue that they are narrow exceptions to the general rule of indissolubility that do not amount to a general principle of dissolubility.

The key point for present purposes is that the textual tradition is internally diverse and does not speak with a single voice on the question of marital indissolubility. The claim that the Hindu tradition categorically prohibits divorce is an oversimplification that serves conservative ideological interests but does not accurately represent the range and complexity of the ancient sources.

1.3 The Colonial Courts and the Construction of Indissolubility

The principle that Hindu marriage is an indissoluble sacrament became firmly embedded in the colonial case law through a series of decisions in which the British courts applied their understanding of the textual tradition to specific disputes. It is worth examining this process of judicial construction with some care, because it illustrates how the colonial encounter shaped what is now treated as the "traditional" Hindu law of marriage in Bangladesh.

The Privy Council's decisions in the nineteenth and early twentieth centuries consistently reflected the sacramental understanding of Hindu marriage. In Tikait v. Basant, frequently cited as an authoritative statement of the principle, the court held that a Hindu marriage is "a sacrament, an indissoluble union of flesh with flesh, bone with bone, to be continued even in the next world." This formulation became one of the most frequently quoted descriptions of Hindu marriage in subsequent decisions, and it was applied in both Indian and Pakistani courts in the post-partition period.

The authority of decisions like Tikait v. Basant should, however, be understood in context. The Privy Council, composed of British judges who had no personal familiarity with Hindu religious tradition and who were dependent on the translations of Orientalist scholars, was not engaged in an authoritative interpretation of ancient Sanskrit texts. It was engaged in the practical exercise of constructing a workable body of case law for the governance of a diverse population. The principle of marital indissolubility was, in that context, both a reflection of the dominant interpretation of the textual sources that the courts received and a pragmatic choice: a rule that

treated all Hindu marriages as indissoluble was simpler to apply than a rule that attempted to identify which communities practised customary divorce and which did not.

The problem is that what was a pragmatic judicial choice in the colonial period was subsequently transmitted to the post-colonial legal systems of India, Pakistan, and eventually Bangladesh as if it were an eternal and authoritative statement of the Hindu law of marriage. The colonial case law was cited as authority long after the conditions that produced it had changed, and the principle of indissolubility became, in the post-colonial legal imagination, an essential feature of Hindu marriage rather than a judicially constructed simplification of a more complex tradition.

The Indian legislature, in enacting the Hindu Marriage Act of 1955, broke decisively with this construction by introducing statutory divorce for Hindus. The Indian Parliament did not thereby violate or abandon the Hindu tradition; it exercised the legislature's authority to reform the law in light of changing social conditions and justice considerations, in a manner that the tradition's own recognition of Dharmic adaptation to time and place fully justifies. The Parliament of Bangladesh could and should do the same.

1.4 The Hybrid Nature of Hindu Marriage: A Jurisprudential Resolution

The most intellectually honest and jurisprudentially sophisticated position on the question of whether Hindu marriage is a sacrament or a contract is that it is, and always has been, both: a hybrid institution that partakes of elements of both sacred union and legal arrangement, and that the balance between these elements is neither fixed by eternal doctrine nor settled by any single authoritative text but is itself a subject of ongoing legal and social negotiation.

This hybridist position is supported by several lines of argument. The ancient texts themselves, as we have seen, recognize both the sacred character of the ceremonies that create the marriage and the practical legal consequences that flow from it: property rights, inheritance entitlements, obligations of support, and so on. These legal consequences cannot be derived from the sacramental character of the union alone; they require a framework of legal rules that is, in structure if not always in content, analogous to the rules that govern contracts and property. The Dayabhaga's entire treatment of inheritance, which depends on the legal status of the marriage (whether a widow is a "widow" in the legally relevant sense, whether a child is "legitimate"), presupposes a framework of marriage law that goes well beyond pure sacramentalism.

The hybrid nature of Hindu marriage has been affirmed in several important judicial decisions in both India and the pre-partition courts of undivided India. In the case of Anjona Dasi v. Ghose, the court observed that marriage, whatever else it is, is also undoubtedly a contract entered into for valuable consideration. In Bhagwati Saran Singh v. Parmeshwari Nandar Singh, the court held that a Hindu marriage is not only a sacrament but also a contract. These decisions do not negate the sacred character of Hindu marriage; they recognize that the institution is complex enough to have both dimensions simultaneously.

The Indian Supreme Court's landmark decision in Dolly Rani v. Manish Kumar Chaudhary, decided in 2025, reaffirmed the centrality of ceremony to the validity of Hindu marriage under

the Hindu Marriage Act, holding that the Saptapadi is essential and that a marriage not performed in accordance with the applicable rites and ceremonies cannot be recognized as a valid Hindu marriage. This decision, which was widely reported and discussed in legal circles across South Asia including Bangladesh, represents the Supreme Court of India's most recent and authoritative statement on the sacramental dimension of Hindu marriage within the statutory framework of the 1955 Act.

What is significant about the Dolly Rani decision for present purposes is not merely its reaffirmation of the sacramental character of the ceremony but the framework within which it operates: the Hindu Marriage Act of 1955, which is itself a statute that both preserves the essential ceremonies and introduces the possibility of divorce. The decision does not hold that because Hindu marriage is a sacrament it cannot be dissolved; it holds that because it is a sacrament the ceremonies must be genuine and not merely symbolic or procedural. The sacramentalism is in the form of creation, not in the perpetual indissolubility of the result. This distinction is crucial for the reform argument in Bangladesh.

CHAPTER TWO: ESSENTIAL CONDITIONS FOR A VALID HINDU MARRIAGE IN BANGLADESH

2.1 The Framework of Validity

The law governing what conditions must be present for a Hindu marriage in Bangladesh to be legally valid is, like most of Hindu personal law in Bangladesh, a mixture of ancient textual rules, colonial case law, and customary practice. There is no comprehensive statute in Bangladesh equivalent to India's Hindu Marriage Act of 1955 that systematically sets out the conditions for validity. This absence creates uncertainty, inconsistency, and injustice, and it is one of the primary arguments for comprehensive legislative reform.

In the absence of statutory codification, the conditions for a valid Hindu marriage in Bangladesh must be derived from the following overlapping sources: the classical requirements derived from the Dayabhaga and its commentaries as recognized by the courts; the colonial case law of the courts of undivided India and subsequently East Pakistan and Bangladesh; the provisions of the Hindu Marriage Registration Act of 2012 (which, while not defining validity, implicitly acknowledges certain features of the marriage); and customary practice, which in many communities has substantially modified the classical requirements.

Drawing from these sources, the following conditions can be identified as the principal requirements for a valid Hindu marriage under the law as operative in Bangladesh.

2.2 Capacity: Age, Mental Competence, and Marital Status

The question of the minimum age for a valid Hindu marriage is one of the most practically significant and most contested aspects of Hindu marriage law in Bangladesh. The classical

Dharmasastra texts, including the Manusmriti, do not set a minimum age for marriage in the modern sense; they contain various prescriptions about the ideal age of the husband relative to the wife (a husband should ideally be three times the wife's age, according to some texts, a prescription that modern readers find as disturbing as it is ancient). What the texts clearly contemplate is the marriage of girls before puberty in certain ideal arrangements, a practice that is deeply inconsistent with modern understandings of children's rights and human dignity.

The Child Marriage Restraint Act of 2017 (which repealed the earlier Child Marriage Restraint Act of 1929) is the primary legislation governing the minimum age of marriage in Bangladesh. The Act sets the minimum age for marriage at 18 for women and 21 for men. However, the Act contains a highly controversial exception provision in Section 19, which allows child marriages to be solemnized in "special circumstances" through a court order obtained for the benefit of the minor and his or her parents. This provision has been widely criticized by child rights advocates and women's rights organizations as effectively nullifying the minimum age requirement in situations where family or community pressure makes a young girl's marriage seem expedient.

For Hindu marriages in Bangladesh, the Child Marriage Restraint Act applies alongside whatever the customary or traditional requirements may be. In practice, the enforcement of the Act in rural Hindu communities is extremely limited. Child marriage remains prevalent among certain sections of the Hindu community, driven by poverty, concerns about girls' safety (particularly in the context of communal tension and the vulnerability of Hindu women to sexual violence), and the continuing practice of dowry that creates incentives for early marriage of daughters.

The mental capacity requirement for a valid marriage is perhaps less controversial in principle but equally problematic in practice. A marriage contracted by a person who lacks the mental capacity to understand what they are consenting to is void under both general principles of law and the specific requirements of valid legal acts. The difficulty in the Hindu marriage context in Bangladesh is that there is no statutory procedure for establishing incapacity, and in practice the pressure of family and community in arranging marriages may effectively override the individual's mental autonomy in ways that fall short of formal incapacity but are equally compromising of genuine consent.

The requirement that neither party have a subsisting valid marriage is fundamental and clear in principle. Polygamy, while practiced historically by some Hindu men of higher caste and status, is contrary to the principles of equality and of the Hindu tradition's own higher commitments. The Hindu Widows' Remarriage Act of 1856 implicitly recognizes the possibility of remarriage after the dissolution of a prior marriage by death. Whether polygamy is prohibited by existing law in Bangladesh for Hindus is actually less clear than one might expect: unlike in India, where the Hindu Marriage Act of 1955 explicitly makes a subsisting prior marriage a ground for nullity, Bangladesh has no equivalent statutory provision, and the position under the Dayabhaga law is that while polygamy is frowned upon and may be regulated by custom, it is not categorically prohibited by the formal rules of Hindu personal law as operative in Bangladesh.

This lacuna in the law has real consequences. A Hindu man in Bangladesh who marries a second woman while his first wife is still alive and his first marriage is still legally subsisting may find that his second marriage is treated as valid in some contexts and invalid in others, depending on what community custom the court applies and how willing it is to extend the prohibition of polygamy from the general principle of Hindu law toward a binding specific rule. The absence of statutory codification means that these questions have to be resolved case by case, with the outcome dependent on factors that are neither clear nor predictable.

2.3 Ceremony: The Constitutional Role of the Saptapadi

The ceremonial requirement is the most distinctive and most philosophically rich aspect of Hindu marriage validity. Unlike a civil or contractual marriage, which is created by the fact of legal agreement and formal registration, a Hindu marriage is created by the performance of specific religious ceremonies. The ceremonies are not merely symbolic markers of an agreement that has already been made; they are, in the classical understanding, the very act that creates the marriage.

The most important of these ceremonies for the Hindu communities of Bengal and Bangladesh is the Saptapadi, the taking of seven steps together by the bride and groom around the sacred fire. The Saptapadi is mentioned in the Rigveda itself, and it has been consistently recognized by the courts as the ceremony whose completion makes the marriage legally binding and irrevocable. The Indian Supreme Court's 2024 decision in Dolly Rani v. Manish Kumar Chaudhary confirmed this position: a Hindu marriage without the Saptapadi (where the custom of the parties requires it) is not a valid Hindu marriage, and registration alone cannot supply the deficiency.

The precise ceremonies that are essential to a valid Hindu marriage vary by community, caste, and region. Among upper-caste Bengali Hindus, the ceremonies typically include the Gaye holud (turmeric ceremony), the Ashirwad (blessing ceremony), the principal wedding ceremony with the Vivaha homa (sacred fire), the Panigrahanam (grasping of the hand), the Sindur Daan (application of vermilion to the bride's parting), and the Saptapadi. Among lower-caste or tribal Hindu communities in Bangladesh, the ceremonies may differ substantially, and the courts have consistently recognized that the requirements for a valid marriage must be assessed by reference to the customs of the particular community rather than by a single universal standard.

This variability of ceremony creates practical difficulties for the courts when they must determine whether a valid marriage has taken place. Where the parties belong to communities with clear and well-established ceremonial traditions and where witnesses are available to confirm that the ceremonies were performed, the determination is relatively straightforward. But in many cases, particularly involving lower-class or rural parties, the ceremonies may have been informal, witnesses may be unavailable or unwilling to testify, and the documentation of the marriage's occurrence is entirely absent. In these cases, the court must determine whether a valid marriage took place on the basis of evidence that is often incomplete, contested, and dependent on the credibility of oral testimony.

The case of Piya Bala Ghosh v. Suresh Chandra Ghosh, decided by the courts before Bangladesh's independence but still frequently cited in Bangladeshi jurisprudence, established that the Homa (sacred fire ceremony) and the Saptapadi are the two essential rites of a Hindu marriage, and that failure to prove their performance renders the marriage legally questionable. This principle has been applied in numerous subsequent cases in Bangladesh, sometimes with the effect that women who believed themselves to be legally married have been found not to be so because they could not prove the performance of the essential ceremonies, with devastating consequences for their inheritance rights and those of their children.

The evidentiary difficulty around ceremonial requirements is one of the most powerful practical arguments for the mandatory registration of Hindu marriages. If the law required that all Hindu marriages be registered within a specified period after the ceremony, the registration record would provide prima facie evidence that the marriage took place, reducing the burden on the parties to prove the performance of ceremonies in contentious litigation. This is the approach taken in India, where Section 8 of the Hindu Marriage Act of 1955 provides for the registration of Hindu marriages, though until recently it was not mandatory in all states.

2.4 The Caste Requirement: Constitutional Infirmity and Reform Urgency

The requirement that both parties to a Hindu marriage be of the same caste (or at minimum of compatible castes within the hierarchy) is one of the most constitutionally problematic aspects of the classical Dayabhaga marriage law as applied in Bangladesh. Under the traditional rules, a marriage between persons of different castes is not merely socially frowned upon but is potentially legally invalid, or at least lacks the full legal status of a marriage within the caste rules.

The constitutional infirmity of this requirement is clear. Article 28 of the Bangladesh Constitution prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. A legal rule that makes the validity of a marriage dependent on the caste of the parties is on its face a form of caste discrimination that the constitution prohibits. The fact that the rule applies within the Hindu personal law system rather than as a general rule of civil law does not escape the constitutional prohibition: as we argued in Part One, constitutional equality principles apply within as well as between religious communities, and no community's personal law can be exempted from the requirement that it treat all citizens, including all members of that community, with equal dignity.

In practice, caste-based marriage restrictions have been eroded by social change and customary evolution in many parts of Bangladesh, particularly in urban areas. Many Hindu families in Dhaka, Chittagong, and other cities have ceased to observe strict caste endogamy in marriage arrangements, and inter-caste marriages within the Hindu community are not uncommon in educated, urban circles. But in rural areas and among more conservative communities, caste considerations remain significant in marriage arrangements, and the absence of clear statutory law affirming the right of Hindus to marry across caste lines without legal consequence creates uncertainty and leaves the parties to such marriages vulnerable to challenges to the validity of their union.

The Special Marriage Act of 1872 provides the one clear legal route by which Hindu persons of different castes can marry in Bangladesh: by marrying under the Act rather than under Hindu personal law, they avoid the caste requirements of the latter. But the Act's procedures are unfamiliar, bureaucratically cumbersome, and poorly publicized among the communities that might benefit from them. Furthermore, a Hindu who marries under the Special Marriage Act loses, under Section 23 of that Act, the rights of succession under Hindu law and becomes subject to the Succession Act of 1925, which may have different and potentially less favorable consequences for inheritance.

The reform agenda must explicitly address the caste requirement by enacting legislation that categorically provides that no Hindu marriage is invalid solely by reason of the parties being of different castes. This is a reform that is clearly required by constitutional principle, clearly compatible with the best of the Hindu tradition's own values (the tradition's emphasis on the spiritual equality of all persons before the divine is directly at odds with the use of caste as a ground for legal discrimination in marriage), and likely to be far less controversial in practice than critics sometimes suggest, given the extent to which caste endogamy has already broken down in many sections of the community.

2.5 Consent: The Problem of Arranged Marriage and Free Will

The question of consent in Hindu marriage is one of the most philosophically challenging aspects of the law, because it sits at the intersection of the classical tradition's understanding of marriage as a family and community arrangement and the modern commitment to individual autonomy as the foundation of all valid legal transactions.

The classical Dharmasastra tradition does not primarily conceive of marriage as a transaction between two consenting individuals. It conceives of it as an arrangement between families, mediated by the religious authority of the Brahmin officiating at the ceremony, and solemnized through rites that invoke divine sanction. The "consent" that matters in this framework is primarily the consent of the families, particularly the fathers of the bride and groom. The Kanyadan, or "gift of the maiden," involves the father formally giving his daughter to the groom; the bride's individual consent is not the primary legal concern in the classical framework.

In the post-colonial and contemporary context, this classical conception of marriage-as-family-arrangement sits in deep tension with both the constitutional guarantee of individual rights and the practical social reality that, particularly among younger and more educated Hindus in Bangladesh, the selection of a marriage partner is increasingly a matter of individual preference and mutual choice. The courts have navigated this tension with varying degrees of sophistication, generally requiring as a minimum that the parties not actively object to the marriage at the time of its solemnization, while stopping short of requiring the kind of clear, free, and informed individual consent that contract law would demand.

The practical consequences of the inadequate attention to individual consent in Hindu marriage law are particularly serious for women, who have historically had less power to resist unwanted marriages and who bear greater costs from unsuitable ones. A Hindu woman who was married as

a child, or who was married under family pressure she could not effectively resist, is in Bangladesh today in a situation where she has no legal recourse: she cannot divorce, she can barely maintain a legal separation, and the courts are likely to apply the technical requirements of validity that look to the performance of ceremonies rather than to the genuine voluntariness of the parties' participation.

Reform legislation must address the consent question directly and clearly, establishing as a condition for the validity of a Hindu marriage the free and voluntary consent of both parties at the time of the ceremony. This is not a departure from the tradition; it is an application of the tradition's own recognition that the Gandharva form of marriage, based on mutual love and choice, is a valid form of Hindu union. It is also a requirement of constitutional principle and of the international human rights obligation under CEDAW to ensure that no marriage is entered into without the free and full consent of both spouses.

CHAPTER THREE: THE Hindu MARRIAGE REGISTRATION ACT 2012: PROMISE AND FAILURE

3.1 The Genesis of the Act

The Hindu Marriage Registration Act of 2012 (hereinafter "the 2012 Act") was the first and, to date, the only piece of legislation enacted by independent Bangladesh specifically addressing Hindu marriage. Its passage in 2012, under the Awami League government of Sheikh Hasina, was preceded by years of advocacy from women's rights organizations, legal reformers, and members of the Hindu community, and it was initially welcomed as a significant, if incomplete, step toward protecting the rights of Hindu married women.

The context of the Act's passage is instructive. The impetus came primarily from the practical problems created by the absence of any registration requirement for Hindu marriages. Without a formal record of marriage, Hindu wives who had been abandoned by their husbands faced the virtually insuperable evidential challenge of proving, to the satisfaction of a court, that they were indeed legally married. Without proof of marriage, there was no basis for maintenance claims, no basis for challenging the legitimacy of a deceased husband's estate, and no documentary record of the marital status that might affect the legitimacy of children. Women who could not prove their marriages were, in the eyes of the law, in a legal limbo: neither clearly married nor clearly single, unable to claim the rights of wives but also unable to remarry without risking a charge of bigamy.

The 2012 Act responded to this problem by creating a voluntary system for the registration of Hindu marriages. The Act established a register to be maintained by local authorities, provided for the appointment of Hindu marriage registrars, and specified the procedure for voluntary registration. It required certain basic information about the parties and the marriage to be recorded, including the names of the parties, their parents, the date and place of the marriage, the name of the officiating priest, and the names of witnesses.

As a gesture toward acknowledging the problem, the 2012 Act was better than nothing. But as a solution to the problem, it was almost immediately recognized as deeply inadequate. The fundamental problem is captured in the Act's own language: Section 3 of the Act provides that "a Hindu marriage may be registered." The word "may" is the key: it creates a right to register but not an obligation. The result is a voluntary registration system that most Hindu couples do not use, either because they are unaware of it, because the registration process is inaccessible or administratively cumbersome, or because there is no penalty for non-registration and therefore no practical incentive.

3.2 The Gap Between the Act and Practice

The implementation of the 2012 Act in the years since its passage has been deeply disappointing. Several systemic problems have been identified by legal practitioners, researchers, and advocacy organizations working with the Hindu community.

The first problem is awareness. A survey of rural Hindu communities in Bangladesh would almost certainly reveal that a significant proportion of Hindu men and women are entirely unaware that the 2012 Act exists, let alone what its provisions are or how to use it. Legal literacy campaigns around the Act have been minimal, and the communities most in need of its protections, those in rural areas with limited access to legal information and government services, are those least likely to know about it.

The second problem is accessibility. The registration process under the Act requires interaction with government offices, the appointment of a Hindu marriage registrar, and the completion of formalities that may be straightforward for educated urban couples but are genuinely difficult for rural, uneducated, or economically marginalized communities. In many parts of rural Bangladesh, the infrastructure for implementing the Act is simply absent: there may be no designated Hindu marriage registrar within reasonable traveling distance, no knowledge of the relevant offices, and no practical means of navigating the bureaucratic requirements.

The third problem is the absence of consequences for non-registration. Under the Muslim Marriages and Divorces (Registration) Act of 1974, the failure to register a Muslim marriage is an offence subject to financial penalty. There is no equivalent penalty in the Hindu Marriage Registration Act of 2012. Without a penalty, there is no meaningful incentive for parties who might otherwise be indifferent to registration to go through the trouble of completing the process.

The fourth problem is the Act's failure to address the substantive problems that make marriage registration most urgently needed. Even if a Hindu marriage is registered under the 2012 Act, the registration does not change the substantive law governing the marriage: it does not give the wife a right to divorce, it does not alter the inheritance rules, and it does not address the absence of maintenance provisions. It simply creates a documentary record of the marriage's existence. This is better than nothing, but it is far from what is needed.

3.3 The Case for Mandatory Registration

The argument for making Hindu marriage registration mandatory is compelling and multi-dimensional. It draws on constitutional principles, practical justice considerations, comparative experience, and the internal logic of what marriage registration is supposed to achieve.

The constitutional argument is straightforward. The Muslim Marriages and Divorces Registration Act of 1974 makes the registration of Muslim marriages mandatory. The absence of a comparable mandatory requirement for Hindu marriages means that Hindu wives are systematically disadvantaged relative to Muslim wives in their ability to prove their marital status, access maintenance, and enforce their legal rights. This differential treatment of citizens on the ground of their religion is precisely the kind of discrimination that Articles 27 and 28 of the Bangladesh Constitution prohibit.

The practical justice argument is equally powerful. The women who suffer most from the absence of mandatory registration are not those with the resources, sophistication, and social support to navigate the voluntary system. They are the most vulnerable Hindu women: those in rural areas, those in poverty, those in communities where educational attainment is low and legal literacy minimal. Mandatory registration, combined with a simple, accessible, and free or low-cost registration process, would ensure that the protection of registration reaches those who need it most, not just those who are already well-placed to protect themselves.

The comparative argument draws on the experience of India and other jurisdictions. In India, several states have made the registration of Hindu marriages mandatory. The Supreme Court of India, in Seema v. Ashwani Kumar (2006), directed that marriage registration should be made compulsory in all states as a measure for the protection of women's rights. While this direction has not been uniformly implemented across all Indian states, the trend is clearly in the direction of mandatory registration, and the evidence from states where it has been implemented is that it has had significant positive effects on women's ability to enforce their marital rights.

The argument from within the Hindu tradition is perhaps the most significant for the specific context of Bangladesh. The classical texts themselves recognize the importance of public acknowledgment of the marriage: the ceremonies are performed in the presence of witnesses specifically so that the marriage is a public, documented fact. A registration system that creates a contemporaneous official record of the marriage is, in this sense, a modern equivalent of the traditional public ceremony requirement: it ensures that the fact of the marriage is recorded and verifiable. Far from being contrary to Hindu tradition, mandatory registration can be framed as an expression and reinforcement of the tradition's own concern with the public, documented, witnessed character of the marital union.

3.4 The Design of an Effective Registration System

Recognizing that mandatory registration is both necessary and constitutionally required is only the first step. The design of an effective registration system for Hindu marriages in Bangladesh must address the practical barriers that have undermined the voluntary system established by the 2012 Act.

The most important design feature is accessibility. Registration should be possible through multiple channels and at minimal or no cost. The current system, which requires interaction with designated registrars through a process that is bureaucratically complex and geographically concentrated in urban areas, must be replaced with a system that is available throughout the country, can be completed within a reasonable time after the marriage ceremony, and does not impose financial or logistical burdens that would effectively deny registration to the poor.

One model worth examining is the system used for Muslim marriages in Bangladesh, under which the Nikah Registrar (Kazi) is present at the marriage ceremony itself and completes the registration as an integral part of the ceremony. An analogous system for Hindu marriages, under which a designated Hindu marriage registrar has authority to attend and certify the completion of the requisite ceremonies, would ensure that registration occurs contemporaneously with the marriage rather than as a subsequent administrative step that the parties may or may not get around to completing.

The registration record should capture not merely the bare fact of the marriage but sufficient information to be useful in subsequent legal proceedings. This should include: the full names and addresses of both parties; their ages and dates of birth; the names of their parents; the caste and sub-caste of each party (not for the purpose of enforcing caste restrictions, which should be abolished, but for the purpose of establishing the customary requirements applicable to the parties); the date, time, and place of the marriage; the names of the officiating priest or religious authority; the names and addresses of at least two adult witnesses; and a description of the essential ceremonies performed.

Penalties for non-registration should be calibrated to be effective without being punitive in a manner that would fall disproportionately on economically marginalized communities. The penalty should be designed primarily as an incentive to comply, not as a source of revenue or a means of criminal sanction. A combination of civil penalties (inadmissibility of unregistered marriage evidence in certain proceedings) and administrative sanctions (responsibility imposed on the officiating priest or marriage organizer rather than solely on the parties themselves) would create effective incentives while distributing the responsibility for compliance in a way that is fair.

CHAPTER FOUR: THE ABSENCE OF DIVORCE: THE MOST URGENT INJUSTICE

4.1 The Human Reality of a System Without Divorce

Before entering the technical legal analysis of the absence of divorce in Hindu personal law in Bangladesh, it is worth pausing to consider what this absence means in the lives of the people it affects. The abstract jurisprudential debate about whether Hindu marriage is a sacrament or a contract, the scholarly discussion of what the ancient texts say about the conditions for remarriage, the comparative analysis of what India or Nepal have done: all of this intellectual

apparatus must be grounded in the recognition that the legal rule under examination causes real human suffering to real human beings whose lives it governs.

The most directly affected are the women. A Hindu woman in Bangladesh whose husband is cruel, abusive, or simply absent has no legal remedy that allows her to end the marriage and move on. She can apply under the Hindu Married Women's Right to Separate Residence and Maintenance Act of 1946 for a decree of judicial separation, entitling her to live apart from the husband and receive maintenance. But this remedy, even when it is available and can be accessed through the courts, does not dissolve the marriage. She remains his wife in law, even as she lives apart from him. She cannot remarry without becoming a bigamist. She cannot legally enter into a new relationship without it having no legal status. If she has children with another man while still legally married to her husband, those children are treated as illegitimate. If her husband dies, she is still his legal widow and subject to all the complications of the widow's inheritance rights, even though she may have been living separately from him for decades.

The man's situation is different and illustrative of the double asymmetry that the system creates. A Hindu man whose wife is "impure" or has behaved in certain ways that the classical texts recognize as grounds for abandonment has, at least in theory, a somewhat greater range of options. A Hindu man who abandons his wife and takes another woman informally, as many do, does so without facing any meaningful legal consequence, because there is no law in Bangladesh specifically addressing a Hindu husband's abandonment of his wife as a criminal offence, and because the enforcement of the maintenance obligation under the 1946 Act is in practice extremely difficult without the cooperation of the husband. The man who leaves suffers few if any legal consequences; the woman he leaves is trapped.

This asymmetry of suffering is not a coincidence or an accident of the system's design. It reflects and reinforces the patriarchal power structure that the classical tradition, as applied through the colonial and post-colonial legal systems, has embedded in the law. Reform is not merely technically desirable; it is morally urgent.

As practitioners of Bangladeshi family law have noted as recently as 2025, "Hindus in Bangladesh cannot legally divorce by notice. The personal law does not recognize divorce, and any notice or affidavit has no power to dissolve the marital bond. Such notices may be used for evidence or social declaration, but legally the marriage continues." Advocacylegalbd This stark reality is confirmed by the legal analysis available in 2026: there is no comprehensive, modern law that provides a uniform right to divorce for all Hindus in Bangladesh, and the rights that do exist are based on traditional interpretations heavily skewed in favor of men. Limpidlaw

4.2 What the Existing Law Actually Provides

The starting point for any analysis of the divorce question must be an honest assessment of what the existing law in Bangladesh does and does not provide for Hindus in the context of marital breakdown.

The Hindu Widows' Remarriage Act of 1856 addresses the right of widows to remarry after the death of their husbands. As we have noted in Part One, this Act is technically in force in Bangladesh and provides an important, if limited, protection: it confirms that the death of a husband does not leave the widow perpetually bound to him in a way that prevents her from entering a new marriage. But it is not a divorce law and addresses only the very specific circumstance of widowhood.

The Hindu Married Women's Right to Separate Residence and Maintenance Act of 1946 is the closest thing to a marital breakdown remedy available to Hindu women in Bangladesh. This Act allows women to seek separation under specific conditions such as cruelty or desertion by the husband, conversion of the husband to another religion, husband's remarriage or cohabitation with a mistress. LegalSeba These grounds are relatively narrow but practically significant. A woman who can satisfy one of them and who has access to the courts and legal representation can obtain a decree entitling her to live apart from her husband and receive maintenance.

The critical limitation of the 1946 Act is that it provides separation, not divorce. A decree under the Act gives the wife the right to live separately and receive financial support; it does not dissolve the marriage. The woman remains legally married to the man from whom she is separated. She cannot remarry. She cannot form a new legal family. She cannot, in short, begin her life again in any legally recognized way.

The Family Courts Ordinance of 1985 provides the institutional framework within which family law matters, including Hindu marriage disputes, are adjudicated. Family courts have jurisdiction over matters including maintenance, custody, and conjugal rights. But the substantive law that family courts apply in Hindu cases is the substantive Hindu law, which does not provide for divorce, and the family courts cannot supply a right that the substantive law does not grant.

The Special Marriage Act of 1872, as noted, allows Hindu persons who marry under the Act to benefit from the dissolution provisions of the Divorce Act of 1869. But this route requires the parties to have originally married under the Special Marriage Act, which very few Hindu couples in Bangladesh do. It is not available as a remedy for the dissolution of a marriage originally contracted under Hindu personal law.

The result is a legal dead end. Bangladesh has no specific law for the dissolution of Hindu marriage. Counselslaw A Hindu woman trapped in an intolerable marriage has effectively no legal remedy that will give her back her freedom and allow her to begin again.

4.3 The Consequences of the Absence of Divorce

The practical consequences of the absence of divorce in Hindu personal law in Bangladesh are severe, multi-dimensional, and not always fully appreciated by those who approach the question from a purely doctrinal perspective. They extend well beyond the immediate situation of the parties whose marriage has broken down, affecting children, communities, and the broader social fabric of the Hindu minority.

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The first and most direct consequence is the personal suffering of those trapped in irreparably broken marriages. This suffering is not evenly distributed: it falls overwhelmingly on women, who in most cases have less economic independence, less mobility, less social support for leaving a marriage, and less capacity to form informal alternative arrangements without social stigma than men. The Hindu husband who has effectively abandoned his marriage suffers few social consequences; the Hindu wife who has been effectively abandoned has no legal remedy and often no practical recourse. She may not be able to support herself independently; she may face social condemnation if she enters into a relationship with another man; she may be denied custody of her children if she attempts to rebuild her life outside the abandoned marriage. The legal rule of marital indissolubility thus operates as a mechanism for the enforcement of women's subjugation and economic dependence.

The second consequence is the proliferation of informal "second marriages." Hindu men who wish to leave a marriage and form a new relationship with another woman do so informally, without any legal recognition of the new union. This has serious consequences for the second woman, who has no legal marital status, and for any children of the second union, who are technically illegitimate. It also creates complex inheritance problems when the man dies: the first wife, from whom he was separated for decades, is still his legal wife and may compete with the second woman and her children for the estate.

The third consequence is the impact on children. Children whose parents are trapped in a loveless or abusive marriage that cannot be legally dissolved grow up in households characterized by conflict, dysfunction, or the physical absence of one parent, without the legal framework that would allow either parent to establish a new stable family unit. Children of informal second unions lack the legal status that would protect their rights, including inheritance rights, in a clear and enforceable way.

The fourth consequence is the impact on the community's sense of its own legal dignity. When a community knows that the law treats it as too archaic, too traditional, too incapable of adult self-governance to have access to the basic legal remedy of divorce, this knowledge corrodes the community's sense of its place in the civic order. The message that the absence of divorce law sends is: you are governed by a law that dates from before the industrial revolution, and we, the state, have never thought it worth our time to modernize it. This is a message of disrespect and neglect that no community committed to its own dignity should accept without vigorous objection.

4.4 The Arguments Against Divorce and Their Answers

The arguments against introducing statutory divorce for Hindus in Bangladesh are familiar and deserve to be taken seriously rather than dismissed. They are not all made in bad faith; some reflect genuine concerns about the consequences of legal change for individuals and communities. But on examination, none of them is sufficient to justify the continuation of the status quo.

The first and most frequently invoked argument is the theological one: that Hindu marriage is a sacrament, divinely sanctioned and therefore humanly indissoluble. We have already engaged with this argument extensively in the earlier sections of this chapter and in Part One, and the response is by now familiar. The tradition's own texts do not speak with a single voice on this question. The Parasara Smriti and the Narada Smriti both recognize circumstances in which a woman can leave a marriage and take another husband. The tradition's recognition of the principle of Dharmic adaptation to time and place (kala, desa, avastha) provides a framework within which reform of the marriage rules is not merely permissible but required when the existing rules produce manifest injustice.

Furthermore, the argument from sacramental indissolubility proves too much if it is taken seriously. If the sacramental character of Hindu marriage means that no human institution can dissolve it, then not only should divorce be prohibited, but it should also be impossible for a Hindu widow to remarry (which the 1856 Act explicitly allows), impossible for a Hindu marriage to be annulled on any ground, and impossible for any court to grant a decree of separation. The selective invocation of sacramentalism to deny divorce while accepting these other remedies suggests that what is at work is not principled theology but selective conservatism that serves particular social interests.

The second argument is the sociological one: that the introduction of divorce will destabilize the Hindu family, lead to a breakdown of the joint family system, and harm women and children who depend on the stability of the marital relationship. This argument is empirically contestable. The evidence from India, where statutory divorce has been available to Hindus since 1955, does not support the claim that divorce law has destroyed the Hindu family. The Hindu family in India has evolved considerably over the seventy years since the Hindu Marriage Act, but the changes reflect broader social and economic forces, not specifically the legal availability of divorce. Divorce rates among Hindus in India, while rising, remain relatively low by international comparison, and the availability of divorce has given women important legal tools without producing the social catastrophe that its opponents predicted.

More fundamentally, the sociological argument against divorce misidentifies the relevant comparison. The question is not whether life with divorce law is better than a world in which marriages never break down. It is whether life with divorce law is better than life without divorce law in a society where marriages do break down regardless of what the law says. The relevant comparison is not between a world with happy, stable marriages and one where marriages are dissolved by law, but between a world where the legal consequences of marital breakdown are managed through a framework of statutory rights and remedies and one where they are unmanaged, leaving the weaker party, typically the woman, to fend for herself without legal protection. By that comparison, divorce law is unambiguously better for vulnerable individuals than its absence.

The third argument is the political one: that attempting to reform Hindu marriage law, including the introduction of divorce, would provoke opposition from conservative elements within the Hindu community and from Islamist political forces who would portray the reform as an attack on religious tradition. This argument is not without merit as a description of the political

landscape. The passage of the 2012 Act, even in its very limited voluntary registration form, attracted criticism from conservative Hindu voices who saw it as unnecessary government interference. A more comprehensive reform, including divorce, would almost certainly attract stronger opposition.

But the political difficulty of reform is not a permanent obstacle; it is a challenge to be managed through political will, community engagement, and effective advocacy. The experience of India in the 1950s, as we have noted, demonstrates that comprehensive Hindu law reform is politically achievable even in the face of significant conservative resistance, provided that political leadership is willing to invest the necessary capital and that the intellectual case for reform is clearly and persuasively made. Bangladesh's current moment of political transition, with its stated commitment to comprehensive legal reform and inclusive citizenship, is perhaps the most favorable political environment for this challenge to be undertaken that the country has yet seen.

4.5 The Grounds for Divorce: A Proposed Framework

The introduction of statutory divorce for Hindus in Bangladesh requires not merely the decision to permit dissolution of marriage but the specification of the grounds on which it will be available. This is perhaps the most technically demanding aspect of the reform agenda for Hindu marriage law.

The Indian Hindu Marriage Act of 1955, as the primary model for reform, provides for divorce on the following grounds: adultery (voluntary sexual intercourse by a party with any person other than the spouse); cruelty (treatment by the respondent that has caused such mental or physical suffering as to make it unreasonable to expect the petitioner to continue the marriage); desertion (abandonment of the petitioner by the respondent for a continuous period of not less than two years immediately preceding the presentation of the petition); conversion (the respondent's conversion to a religion other than Hinduism); mental disorder; communicable disease; renunciation of the world; and a presumption of death after seven years of absence.

Additionally, Section 13B of the Indian Act, introduced by the Marriage Laws (Amendment) Act of 1976, provides for divorce by mutual consent, where both parties have been living separately for at least one year and have agreed to dissolve the marriage. The Supreme Court of India has in recent years liberally interpreted the one-year separation requirement and has in some cases even waived it in the exercise of its jurisdiction under Article 142 of the Constitution.

For Bangladesh, a divorce law for Hindus should draw on the Indian model while taking account of the specific social conditions and community concerns of Bangladesh. The following considerations should guide the design of the grounds for divorce.

The grounds should be comprehensive enough to address all the circumstances in which the continuation of the marriage causes serious injustice, but should not be so broad as to be effectively equivalent to divorce on demand. A careful balance between the protection of the stability of the marriage institution (which is itself a value that the Hindu tradition affirms) and the protection of the individual rights of parties trapped in intolerable marriages is necessary.

The grounds should be available equally to both parties. The historical Hindu law's asymmetric approach to marital breakdown, in which men had more exit options than women, must not be replicated in the reformed system. The principle of legal equality between spouses requires that both parties have access to the same divorce remedies on the same conditions.

The fault-based grounds (adultery, cruelty, desertion) should be supplemented by no-fault grounds, particularly divorce by mutual consent and divorce on the ground of irretrievable breakdown of the marriage. The purely fault-based approach to divorce has been criticized by legal reformers across different jurisdictions on the ground that it incentivizes fabrication and false accusation, prolongs acrimonious litigation, and fails to recognize that marriages can and do break down without any single party being uniquely at fault. A no-fault divorce ground, particularly divorce by mutual consent after a period of separation, provides a more honest and less damaging legal framework for the recognition of marital breakdown.

The procedural requirements for divorce should include mandatory efforts at conciliation or mediation before the divorce petition is decided, reflecting the Hindu tradition's own emphasis on the importance of reconciliation and the maintenance of family relationships. The Family Courts Ordinance of 1985 already provides a framework for mediation and conciliation in family disputes, and this framework could be strengthened and extended to divorce proceedings. But the conciliation requirement should not be used as a mechanism for delay or for pressuring reluctant parties to remain in harmful marriages; it should be genuinely oriented toward reaching agreement, with a clear and relatively short timeline after which the petition proceeds if conciliation fails.

The consequences of divorce, including maintenance obligations, custody of children, and division of property, must also be addressed in the reform legislation. A divorce law that does not address these consequences may achieve the dissolution of the marriage at the cost of leaving the economically weaker party, usually the wife, in a precarious situation. The maintenance regime for divorced women must be adequate to provide genuine economic security for a reasonable period of transition.

CHAPTER FIVE: CONJUGAL RIGHTS AND JUDICIAL SEPARATION

5.1 The Remedy of Restitution of Conjugal Rights

The remedy of restitution of conjugal rights, by which a court orders a spouse who has withdrawn from the matrimonial home without reasonable excuse to return to cohabitation with the other spouse, is a controversial aspect of Hindu marriage law that exists in both the Indian statutory framework and the uncodified law applicable in Bangladesh.

In Bangladesh, the remedy of restitution of conjugal rights is available in Hindu marriage matters through the Family Courts Ordinance of 1985, which gives the family courts jurisdiction over "restitution of conjugal rights" as one of the specified family law matters. The practical operation

of the remedy is that a spouse (in practice, usually a husband whose wife has left the matrimonial home) can petition the family court for an order directing the other spouse to return. If the court grants the order and the other spouse refuses to comply, she (or he) may be found in contempt of court.

The restitution of conjugal rights remedy has attracted significant feminist criticism, both in Bangladesh and in India, on the ground that it effectively amounts to the court ordering a person to live with and cohabit with another person against their will, which can be seen as a violation of bodily autonomy and personal dignity. In India, the remedy has been challenged but ultimately upheld by the Supreme Court in T. Sareetha v. T. Venkata Subbaiah (1983) (where the Andhra Pradesh High Court struck it down) and Saroj Rani v. Sudarshan Kumar Chadha (1984) (where the Supreme Court upheld it). The debate about the appropriateness of the remedy continues in Indian legal circles.

In the context of Bangladesh, where there is no divorce law for Hindus, the restitution of conjugal rights remedy plays a particularly complex role. On one hand, it is one of the few formal remedies available to a spouse who believes that the marriage is viable and worth preserving and whose partner has unilaterally withdrawn from it. On the other hand, it can be used as a tool of coercion against women who have left abusive or intolerable marriages, and in the absence of any divorce option, compliance with a restitution order may mean returning to a situation of genuine danger.

The reform of Hindu marriage law in Bangladesh must address the restitution of conjugal rights remedy explicitly. The most defensible approach is to retain the remedy as an option in appropriate cases (recognizing that there are circumstances in which one partner genuinely wishes to preserve a viable marriage that the other has impulsively or unreasonably abandoned) while incorporating strong protections against its use as a coercive mechanism. Specifically, the reform should provide that a restitution order cannot be granted against a party who has left the matrimonial home to escape cruelty, abuse, or other circumstances recognized as grounds for divorce or separation, and that the sanction for non-compliance with a restitution order should be limited to financial consequences rather than imprisonment or other forms of personal compulsion.

5.2 Judicial Separation and Its Limitations

The Hindu Married Women's Right to Separate Residence and Maintenance Act of 1946 is the primary vehicle for judicial separation in Bangladesh's Hindu marriage law. As we have noted, it provides grounds on which a married Hindu woman can seek a decree entitling her to live separately from her husband and receive maintenance. The grounds include cruelty, desertion, conversion of the husband to another religion, and several other specific circumstances.

The 1946 Act is valuable but deeply inadequate for several reasons. First, its grounds are narrowly defined and do not cover all the circumstances in which a woman legitimately needs the protection of a judicial separation. A woman whose marriage has simply broken down

through mutual incompatibility, without any specific act of cruelty or desertion that can be proved to the court's satisfaction, has no remedy under the Act.

Second, the Act is practically inaccessible to many of the women who most need it. Bringing a petition under the Act requires access to a family court, legal representation, and the ability to present evidence of the grounds for separation. For rural, uneducated, economically marginalized Hindu women, these requirements create barriers that are effectively insuperable. Legal aid services are insufficient to meet the demand, and many women simply do not know that the Act exists or what it provides.

Third, the maintenance provisions of the Act are inadequate. The quantum of maintenance that courts award under the Act is often set at levels that provide only minimal financial support, and the enforcement of maintenance orders against absent or non-cooperative husbands is difficult and time-consuming.

Fourth, and most fundamentally, the Act provides separation but not freedom. The woman who obtains a decree under the Act is still legally married. She cannot remarry. She cannot form a new family. The legal tie that causes her suffering is loosened but not severed. She remains in a kind of legal limbo that is, in some respects, more complex and more burdensome than either the full continuation of the marriage or its dissolution would be.

Reform must address all of these limitations. In the context of a comprehensive Hindu marriage law, judicial separation should be available on broader grounds, should be procedurally accessible, should be accompanied by adequate maintenance provisions, and should be understood as a step on the way to divorce (if the separation continues for a specified period and the parties do not reconcile) rather than as a permanent alternative to it.

CHAPTER SIX: POLYGAMY AND HINDU MARRIAGE IN BANGLADESH

6.1 The Legal Status of Polygamy

The legal status of polygamy under Hindu personal law in Bangladesh is one of the most significant and least frequently discussed deficiencies of the existing legal framework. Unlike in India, where the Hindu Marriage Act of 1955 clearly and unambiguously makes a subsisting prior marriage a ground for nullity of a subsequent marriage (effectively prohibiting polygamy for Hindus), Bangladesh has no equivalent statutory provision. The position under the uncodified Dayabhaga law as applied in Bangladesh is that polygamy, while frowned upon in the higher-caste tradition and regulated by various customary rules in different communities, is not categorically prohibited as a matter of formal legal rule.

This creates a situation of significant injustice. A Hindu man in Bangladesh can, under the existing law, marry a second woman without dissolving his first marriage. The second marriage may be recognized as valid by a court applying Dayabhaga law, and the children of the second

marriage may be recognized as legitimate. The first wife, who has no grounds to obtain a divorce and whose husband has not deserted her or treated her with the specific forms of cruelty recognized under the 1946 Act (but has instead simply taken a second wife), may find herself without any adequate legal remedy.

The toleration of polygamy in the Dayabhaga tradition was connected to the religious understanding of marriage as primarily serving the purposes of religious duty (Dharma), procreation, and the continuation of the family line. If a first wife was unable to bear children, particularly male children who could perform the Shraddha ceremony for the deceased father, it was considered religiously acceptable, even required, for the husband to take a second wife. This religious justification for polygamy is entirely incompatible with modern principles of gender equality and human dignity, and it cannot be accepted in any reformed system of Hindu marriage law.

The reform required here is clear and uncontroversial in principle: the explicit statutory prohibition of polygamy for Hindus, making a subsisting prior marriage a ground for the nullity of any subsequent marriage. This reform is consistent with the best of the Hindu tradition's own values (the commitment to marital faithfulness is explicitly affirmed in the classical texts), clearly required by constitutional equality principles, and directly responsive to a real and identifiable injustice.

6.2 The Sociology of Polygamy in Bangladesh's Hindu Community

Before leaving the topic of polygamy, it is worth noting the sociological context in which it occurs within Bangladesh's Hindu community, because this context shapes both the urgency of reform and the approach that reform should take.

Polygamy in Bangladesh's Hindu community is not a common or socially accepted practice among most urban, educated sections of the community. It is associated primarily with certain rural communities, with lower-income groups, and with situations involving economic and social vulnerability. In many cases, the taking of a second wife occurs precisely because the first wife has not produced a male child, reflecting the continuing powerful influence of the patrilineal conception of the family.

The first wife in a polygamous situation is typically in an extremely vulnerable position. She cannot divorce her husband; she has no right to leave the marriage without the specific grounds required by the 1946 Act (which may not be satisfied simply by reason of the husband taking a second wife, depending on the interpretation of the relevant provision); and she may find herself economically dependent on a husband who has transferred his primary emotional and financial attention to the new wife. The absence of any divorce remedy for Hindus, combined with the absence of an explicit prohibition of polygamy, creates a situation of compounded injustice in which the most vulnerable women have the least recourse.

CHAPTER SEVEN: INTER-RELIGIOUS MARRIAGE AND THE LEGAL FRAMEWORK

7.1 The Special Marriage Act 1872 and Its Limitations

The possibility of marriage between a Hindu and a non-Hindu in Bangladesh is governed primarily by the Special Marriage Act of 1872, as we have noted. Under this Act, a Hindu may marry a person of a different religion (or no religion) in a civil ceremony conducted under the Act, rather than under the parties' respective personal laws. The Act provides for the registration of such marriages and establishes their legal consequences.

However, the 1872 Act has several significant limitations that make it an inadequate framework for inter-religious marriages in the contemporary context. First, as noted earlier, a Hindu who marries under the Act loses the right of succession under Hindu personal law and becomes subject to the Indian Succession Act of 1925 instead. This consequence may be disadvantageous, particularly in the inheritance context, and may discourage Hindu parties from using the Act even when they would otherwise wish to.

Second, the Act does not address the personal law consequences of the marriage in a manner that is predictable or fair. If a Hindu woman marries a Muslim man under the Special Marriage Act, what law governs the maintenance obligations of the husband? What law governs the custody of their children? The Act does not provide clear answers to these questions, and the courts have sometimes struggled to resolve them in a principled way.

Third, and perhaps most significantly for the specific context of Bangladesh, the social reality is that inter-religious marriages in Bangladesh, particularly between Hindus and Muslims, are subject to enormous social pressure and stigma, and often provoke violence from the families and communities of one or both parties. The existence of a legal framework for inter-religious marriage is largely irrelevant if the social conditions make exercising the legal option practically dangerous.

Bangladeshi family laws are mostly governed by the relevant individual's religion, and under Islamic law a Muslim man may marry a follower of any Kitaab (scripturalist), but polytheists and idol or fire worshippers, such as Hindus, are prohibited from marrying. Tahmidurrahman This creates a profound asymmetry: a Muslim man may marry a Hindu woman who converts, but the same legal logic that excludes Hindu polytheists from valid Muslim marriage also creates social pressure against the union. The reform of the legal framework for inter-religious marriage is ultimately a question that goes beyond the scope of Hindu personal law reform alone and requires a broader rethinking of the relationship between personal law and civil marriage in Bangladesh.

7.2 The Constitutional Question of Inter-Religious Marriage

The constitutional dimension of the inter-religious marriage question in Bangladesh deserves extended attention. Article 41 of the Bangladesh Constitution guarantees freedom of religion.

Article 28 prohibits discrimination on grounds of religion. Article 36 guarantees freedom of movement, which the Supreme Court of India (and scholars of Bangladeshi constitutional law have suggested a similar interpretation might apply in Bangladesh) has been interpreted as including freedom of choice in personal relationships.

If the law of Bangladesh, as a practical matter, makes it impossible for a Hindu woman and a Muslim man (or any other inter-religious couple) to marry on terms that are fair to both parties, is this not a violation of these constitutional guarantees? The answer seems clearly yes, and yet the practical barriers to inter-religious marriage remain enormous, and the legislative framework for addressing them is entirely inadequate.

The reform of Hindu marriage law in Bangladesh provides an opportunity to address at least part of this problem, by creating a comprehensive civil marriage alternative that is accessible, fair, and clearly defined in terms of its personal law consequences. A civil marriage option that does not require either party to abandon their religion, that provides clear rules for the governance of the marriage, and that is socially protected by clear anti-discrimination provisions would be a significant contribution to the protection of the constitutional rights of all Bangladeshi citizens, including but not limited to Hindus.

CHAPTER EIGHT: DOWRY AND HINDU MARRIAGE IN BANGLADESH

8.1 The Dowry Practice and Its Legal Framework

The practice of dowry (the payment by the bride's family to the groom or groom's family at the time of marriage) is deeply embedded in the marriage practices of many communities in Bangladesh, including the Hindu community. Dowry is legally prohibited under the Dowry Prohibition Act of 1980, which applies to all communities, but this legislative prohibition has had limited practical effect on the actual practice, which remains prevalent particularly in rural areas.

In the Hindu community, dowry practice intersects with the personal law in several complex ways. The classical distinction between Stridhana (property that a woman receives as gifts from her natal family, constituting her absolute personal property) and dowry (payments made by her family to the groom's family) is legally significant but often practically unclear. Gifts made to the bride at the time of marriage may qualify as Stridhana, giving her absolute ownership; payments made to or kept by the groom's family are more straightforwardly dowry, which is prohibited by the 1980 Act.

The problem of dowry demands in Hindu marriages in Bangladesh is exacerbated by the absence of clear legal rules governing property rights in marriage. If daughters had clear inheritance rights equal to sons, the economic position of women in the marriage market would improve, potentially reducing the pressure on families to pay dowry as a substitute for the property rights their daughters are denied. If marriages were registrable and registered, the documentation of

what was paid and to whom would be clearer, making enforcement of the dowry prohibition more straightforward. If divorce were available, the threat of being trapped in a dowry-motivated marriage that subsequently turns abusive would be less catastrophic for the woman who enters into it.

The reform of Hindu personal law is thus directly connected to the reduction of dowry demands, not merely indirectly through the improvement of women's general status but specifically through the legal mechanisms that would alter the incentive structure around marriage.

8.2 Dowry-Related Violence and the Hindu Community

The problem of dowry-related violence affects the Hindu community in Bangladesh as it does other communities, but it has specific dimensions that reflect the distinctive features of Hindu personal law. A Hindu woman who faces dowry-related violence from her husband or his family has even fewer legal options than her Muslim counterpart: she cannot divorce, she may face enormous difficulty proving that the violence meets the specific threshold required for a separation order under the 1946 Act, and she may be reluctant to seek legal help because of the community stigma that attaches to public family disputes.

The legal and social support systems available to Hindu women facing dowry violence are inadequate. While the domestic violence law of Bangladesh (the Domestic Violence (Prevention and Protection) Act of 2010) applies to all citizens regardless of religion, its effectiveness in protecting rural Hindu women is limited by the same access barriers that undermine the effectiveness of Hindu personal law more generally: lack of awareness, lack of legal representation, lack of physical access to courts and support services.

Reform of Hindu marriage law cannot be considered in isolation from reform of the support systems available to Hindu women experiencing marital violence. This means not only the legislative changes discussed in this chapter but also investment in legal aid, in women's shelters, in community-based support networks, and in the training of police and judicial officers to respond appropriately to the specific vulnerabilities of Hindu women in distress.

CHAPTER NINE: HINDU MARRIAGE AND THE RIGHTS OF CHILDREN

9.1 The Legitimacy of Children of Hindu Marriages

The legal status of children born of Hindu marriages in Bangladesh depends critically on the validity of the marriage itself, and the uncertainty about validity that we have documented in earlier sections of this chapter creates corresponding uncertainty about the legitimacy of children. A child born of a marriage that is subsequently found not to have been validly contracted under Hindu law is, in legal principle, illegitimate, with consequences that include exclusion from the ordinary succession to the father's property.

The category of "legitimacy" and its legal consequences are among the most unjust features of any legal system: the child who is disadvantaged by being found illegitimate has no personal responsibility for the circumstances of the parents' marriage or its validity. The child is innocent of whatever defect the law finds in the parents' union, and yet it is the child who suffers the legal consequences. This injustice is recognized in the law reform literature across many jurisdictions, and many modern legal systems have either abolished the distinction between legitimate and illegitimate children or significantly reduced its consequences.

For Hindu law in Bangladesh, the legitimacy question is particularly acute because of the uncertainty about what constitutes a valid marriage that we have documented. Where a couple has lived together as husband and wife, where they and their community have treated the relationship as a marriage, and where the "marriage" may have been performed in some form of ceremony that falls short of the full classical requirements, the children of that union may find themselves in an uncertain legal position when the father's estate is distributed.

Reform legislation should address this question by providing clear rules about the legitimacy of children, with a strong presumption in favor of legitimacy in all cases where the parents have lived together as a couple, and with provisions ensuring that even where a marriage is found void or voidable, the rights of children born or conceived before the finding of invalidity are protected.

9.2 Custody and Guardianship of Children in Hindu Marriages

The law governing custody and guardianship of children in Hindu families in Bangladesh is governed primarily by the Guardians and Wards Act of 1890, which applies to all communities and which directs the court to treat the "welfare of the minor" as the paramount consideration in custody and guardianship decisions. This general welfare-of-the-minor standard is sound in principle and has been applied with considerable sophistication in the case law of the family courts and the higher courts.

However, the classical Hindu law of guardianship, derived from the Dayabhaga tradition, places primary guardianship of minor children with the father, with the mother's rights being secondary. This classical rule has been substantially modified by the Guardians and Wards Act, which gives equal status to both parents in guardianship proceedings and directs the courts to focus on the child's welfare rather than on the parents' respective positions in the traditional hierarchy. But residual effects of the classical rule persist in some judicial attitudes and in the expectations of parties appearing before the courts.

In the context of marital breakdown among Hindus, the absence of divorce law creates specific complications for custody. Where a Hindu couple has separated but cannot divorce, the children may be subject to competing claims from both parents without the legal framework that divorce proceedings would provide for resolving those claims systematically. The reform of Hindu marriage law to include divorce must be accompanied by a comprehensive framework for addressing the custody and maintenance of children on divorce, ensuring that the welfare of the

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child is the paramount consideration and that the economic capacity to care for the child does not automatically favor the wealthier parent.

CHAPTER TEN: THE INDIAN HINDU MARRIAGE ACT 1955: A DETAILED COMPARATIVE ANALYSIS

10.1 The Structure and Scope of the Indian Act

The Hindu Marriage Act of 1955 is the most important comparative reference point for any reform of Hindu marriage law in Bangladesh. It is not merely the closest geographically available model; it is the most directly relevant model, because it was designed for the same Dayabhaga-tradition population of Bengal as constitutes the majority of Bangladesh's Hindu community (though the Act actually abolished the Dayabhaga-Mitakshara distinction in most practical respects). Understanding it in detail is essential for designing equivalent legislation for Bangladesh.

The Act consists of thirty sections organized into a logical structure. Chapter I establishes the preliminary matters: the short title, extent of application, and definitions. The Act applies to Hindus, which it defines broadly to include not merely followers of the Hindu religion in the strict sense but also Buddhists, Jains, and Sikhs. The definition of Hindu is thus functional and inclusive rather than strictly theological. This definitional approach has implications for Bangladesh, where the question of whether Buddhists and Jains should be included within a reformed Hindu personal law (as they are in India) or governed by separate legislation (as might be appropriate given their distinct religious traditions) requires careful consideration.

Chapter II addresses conditions for a Hindu marriage, setting out in clear statutory language the requirements we discussed in the earlier sections of this chapter: the monogamy requirement (Section 5(i)), the minimum age requirement (Section 5(iii)), the prohibition of sapinda relationships (relationships of excessive consanguinity), and the absence of certain prohibited degrees of relationship. Importantly, the Act does not impose any caste restriction on marriage; it explicitly abolishes the classical caste requirement by not mentioning it, while providing (in Section 3) that customs and usages valid at the time of the Act's commencement remain binding.

Chapter III of the Act addresses ceremonies for Hindu marriage (Section 7), providing that a Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party to the marriage. The section then provides specifically for the Saptapadi: where this ceremony is observed, the marriage becomes complete and binding when the seventh step is taken. This single provision has been the source of extensive litigation about the validity of Hindu marriages in India, as courts have been called upon to determine whether the Saptapadi or its equivalent was performed, and whether its non-performance renders the marriage void or merely voidable.

The Indian Supreme Court's April 2024 decision reaffirming the centrality of the Saptapadi to the validity of Hindu marriage under the Act is noteworthy precisely because it comes sixty-nine years after the Act was passed: it demonstrates that the ceremonial requirements continue to have genuine significance, that they are not merely historical artifacts but living legal requirements, and that the Act's hybrid character (preserving the sacramental form while introducing modern statutory content) has proved remarkably durable.

Chapter IV of the Indian Act addresses void and voidable marriages. A void marriage is one that is a nullity from the beginning: it produces no legal consequences, it cannot be ratified, and no formal order is needed to establish that it is void (though parties typically seek such an order for clarity). Under Section 11 of the Act, a marriage is void if it contravenes the conditions in clauses (i), (iv), and (v) of Section 5: that is, if either party had a subsisting prior marriage (polygamy), if the parties are within the prohibited degrees of relationship, or if the parties are sapindas of each other (within the prohibited degrees of relationship based on common ancestry).

A voidable marriage is one that is valid until it is annulled by a court order. Under Section 12 of the Act, a marriage is voidable if the marriage has not been consummated due to the impotence of the respondent; if the consent of either party was obtained by force or fraud; if the petitioner was pregnant by another person at the time of marriage; or if the respondent was at the time of marriage suffering from mental disorder.

Chapter V of the Indian Act contains the central reform of the legislation: the provisions for divorce. Section 13 of the Act provides for divorce on the following fault-based grounds: adultery; cruelty; desertion for two years; conversion to a non-Hindu religion; incurable insanity; communicable venereal disease; leprosy; renunciation of the world; and a presumption of death. Section 13(2) provides additional grounds available only to the wife: grounds that reflect the specific vulnerabilities of women in the social context of 1950s India, including the husband's guilty of rape, sodomy, or bestiality; that in a marriage solemnized before the wife attained 15 years she repudiates the marriage before attaining 18 years; and that she has obtained a decree of maintenance in certain proceedings but has been living separately for one year.

Section 13B, introduced in 1976, provides for divorce by mutual consent after one year of separation. This provision has become one of the most frequently invoked provisions of the Act in recent years, as changing social attitudes in India have made mutual consent divorce an increasingly common resolution to failed marriages.

Chapter VI of the Indian Act addresses the jurisdiction of courts, including the jurisdiction to order permanent alimony and maintenance on divorce. The provisions for maintenance on divorce are particularly important for women, who are typically the economically weaker party, and the Indian courts have developed a sophisticated body of case law on the factors that should determine the quantum of maintenance.

10.2 Lessons from the Indian Experience: The Judicial Development of the Act

The seven decades of judicial development of the Hindu Marriage Act of 1955 by the courts of India provide an extraordinarily rich body of case law that is directly relevant to the design of equivalent legislation for Bangladesh. The Indian experience teaches several important lessons.

The first lesson is that the courts will actively develop the law in unanticipated directions when given the freedom to do so by the legislative framework. The concept of "cruelty" as a ground for divorce, for instance, has been dramatically expanded by the Indian courts from its original narrow meaning (physical violence) to encompass a wide range of mental and emotional harm, including persistent humiliation, the infliction of emotional distress, and behavior that makes it unreasonable to expect the petitioner to continue cohabitation. This judicial expansion of the concept of cruelty has made the ground for divorce significantly broader in practice than the original statutory language might have suggested.

The second lesson concerns the remedy of irretrievable breakdown of marriage. The Indian courts, frustrated by cases in which it was clear to everyone that a marriage had permanently broken down but the statutory grounds for divorce had not technically been met, developed an increasing willingness to dissolve such marriages using the Supreme Court's power under Article 142 of the Constitution to "do complete justice." This "irretrievable breakdown" principle, which operates as a kind of judicial equity in the divorce law, has been controversial in India but has provided an important safety valve for cases that fall between the formal statutory grounds. A reformed Hindu marriage law for Bangladesh should consider incorporating an explicit "irretrievable breakdown" ground for divorce in the statute itself, rather than leaving its development entirely to judicial improvisation.

The third lesson concerns the relationship between the divorce law and the maintenance law. The Indian courts have, in a long series of decisions, grappled with the difficult question of what maintenance obligations survive the divorce and how they should be quantified. The development of the law in this area has been uneven and sometimes inconsistent, reflecting the difficulty of balancing the competing interests of the former spouses and the limitations of the courts' factual inquiry in determining the parties' financial positions. A Bangladesh divorce law should address maintenance on divorce clearly and comprehensively in the statute itself, rather than leaving the matter entirely to judicial discretion.

The fourth lesson is about the procedural dimension of divorce. The Indian experience shows that the procedural requirements for divorce, including mandatory attempts at conciliation, the six-month cooling-off period for mutual consent divorce (which the Supreme Court has sometimes waived), and the evidentiary requirements for fault-based divorce, have enormous practical significance. Procedures that are too cumbersome or expensive effectively deny the right of divorce to the economically marginalized; procedures that are too easy may lead to hasty decisions that the parties come to regret. The design of the procedural framework for divorce in a reformed Hindu marriage law for Bangladesh must be carefully calibrated to balance these competing considerations.

10.3 The Supreme Court of India's 2025 Decision in Dolly Rani and Its Implications for Bangladesh

The Indian Supreme Court's 2025 decision in Dolly Rani v. Manish Kumar Chaudhary is one of the most significant recent developments in Hindu marriage jurisprudence and deserves extended attention from the perspective of Bangladesh's reform agenda.

The court reiterated in the case of Dolly Rani v. Manish Chaudhary as recently as 2025 that the ceremony of Saptapadi, performed in front of a Vivah Homa, is necessary for the conclusion of a marriage under Hindu law, providing that Hindu marriage is still a sacrament and not a social contract. (JLRJS)

What is particularly significant about the decision for our purposes is the framework within which this affirmation of the ceremonial requirement operates. The court did not hold that because the Saptapadi is a sacramental requirement, marriage is indissoluble; it held that the Saptapadi must be genuinely performed in order for the marriage to be validly created. The consequence of non-performance is that there is no marriage to dissolve, not that an existing marriage cannot be dissolved. This is a crucial distinction, and it illustrates the way in which the Indian Act has achieved a sophisticated synthesis of the sacramental and statutory dimensions of Hindu marriage: the creation of the marriage is governed by sacramental requirements; the continuation and dissolution of the marriage is governed by statutory rules informed by principles of justice and equality.

For Bangladesh, the Dolly Rani decision is instructive in two ways. First, it confirms that any reformed Hindu marriage law for Bangladesh must preserve the ceremonial requirements for the creation of a valid marriage, because these requirements are deeply embedded in the religious identity of the Hindu community and their preservation is consistent with the right of religious freedom. Second, it illustrates that preserving the ceremonial requirements is entirely compatible with introducing comprehensive statutory rules governing the consequences and possible dissolution of marriage: there is no contradiction between respecting the sacred character of the marriage ceremony and providing for the dissolution of marriages that have irreparably broken down.

CHAPTER ELEVEN: CUSTOMARY MARRIAGE PRACTICES AND THEIR LEGAL RECOGNITION

11.1 The Diversity of Hindu Marriage Customs in Bangladesh

The Hindu community in Bangladesh is not a monolithic group with uniform marriage customs. The community includes upper-caste Bengali Hindus, various lower-caste communities with their own distinct marriage practices, tribal communities from the Chittagong Hill Tracts and other areas who practice forms of indigenous religion that overlap with Hinduism, and urban educated communities in whom the classical ceremonies are practiced with varying degrees of adherence to traditional form.

This diversity of marriage custom creates both a challenge and an opportunity for reform. The challenge is that any legislative framework for Hindu marriage must be capable of accommodating this diversity: a one-size-fits-all approach that imposes the upper-caste Bengali ceremonial requirements on all Hindu marriages in Bangladesh would be both inappropriate and unjust to communities with different traditions. The opportunity is that the diversity of customary practice provides empirical evidence that the allegedly immutable rules of the Hindu tradition are in fact quite flexible, capable of adaptation to different community needs, and have historically been adapted in precisely this way.

The Santhals, the Garos, the Manipuris, and other communities in Bangladesh who practice forms of religion with Hindu elements often have marriage customs that differ substantially from the Dayabhaga tradition's requirements. Their marriages have been recognized by the courts as valid under the customary law of their respective communities, even where they do not satisfy the classical ceremonial requirements. This customary recognition provides the legal foundation for a reformed law that explicitly acknowledges community diversity while establishing minimum requirements of validity that protect the rights of all parties.

The minimum requirements should be those that are essential for the protection of rights: free consent of the parties, minimum age, absence of a subsisting prior marriage, and some form of public solemnization (with registration as the documentary record). Beyond these minimum requirements, the specific ceremonies and customs of the parties' communities should be respected and recognized as sufficient for a valid marriage.

11.2 The Sindur Daan and Other Bengali Hindu Marriage Traditions

Among Bengali Hindu communities in Bangladesh, the most visually and emotionally significant element of the marriage ceremony is often the Sindur Daan, the groom's application of red vermilion powder to the parting of the bride's hair. The Sindur Daan is not among the ceremonies that the classical texts specify as essential to the validity of the marriage; the Saptapadi and the Vivaha Homa are generally considered the essential ceremonies. But the Sindur Daan has acquired, in Bengali Hindu culture, an enormously powerful symbolic significance as the moment at which the bride becomes a married woman. The red sindur in the parting of the hair is, in everyday social life, the most immediately visible sign of a woman's married status, and its application by the groom is experienced by participants and observers as the moment of union.

The legal significance of this customary practice deserves attention in the reform context. A number of cases in the courts of both undivided India and post-partition Bangladesh and India have involved disputes about the validity of marriages in which the Sindur Daan was performed but the Saptapadi was not, or vice versa. The courts have generally held that the essential ceremonies for a valid marriage are those specified in the textual tradition (Saptapadi, Homa) rather than those that have acquired cultural significance through custom, but they have also recognized that the customary practices of specific communities may modify this general rule.

A reformed Hindu marriage law for Bangladesh should expressly recognize both the classical ceremonies and the customary ceremonies of specific communities as sufficient evidence of the

validity of a marriage, while making clear that the registration of the marriage provides the conclusive documentary record that protects the rights of both parties.

CHAPTER TWELVE: MAINTENANCE, ALIMONY, AND FINANCIAL PROVISION IN HINDU MARRIAGE

12.1 The Maintenance Obligation During Subsisting Marriage

The obligation of a Hindu husband to maintain his wife is recognized in both the classical Dharmasastra tradition and the colonial and post-colonial legislation applicable in Bangladesh. The classical texts are clear that a man has an obligation to provide for the physical needs of his wife; this is one of the primary duties of the grihastha or householder. But the practical enforcement of this obligation, and the quantification of what is owed, are matters on which the existing law is inadequate.

The Hindu Married Women's Right to Separate Residence and Maintenance Act of 1946, as we have noted, provides for maintenance on the ground of judicial separation. But the Act does not provide a general right to maintenance for a wife who is living with her husband and who is not claiming judicial separation. The Family Courts Ordinance of 1985 gives the family courts jurisdiction over maintenance matters in family law cases, but the substantive law governing the quantum of maintenance for Hindu wives is sparse and uncertain.

This gap in the maintenance law means that a Hindu wife who is living with an abusive or irresponsible husband has limited legal tools for ensuring that she receives the financial support to which she is entitled. She may petition the family court for maintenance, but the court's determination of the appropriate amount is governed by general principles rather than clear statutory rules, and the enforcement of the order against a non-cooperative husband is notoriously difficult in the Bangladesh legal system.

Reform must establish clear statutory rules for the maintenance of a Hindu wife during the subsistence of the marriage, including: clear entitlement to maintenance regardless of whether the parties are living together or separated; clear criteria for determining the quantum of maintenance (including the parties' respective incomes, needs, and standard of living during the marriage); an effective enforcement mechanism; and provisions for the modification of maintenance orders when circumstances change.

12.2 Maintenance and Alimony on Marital Breakdown

In the context of marital breakdown, the financial provision for the economically weaker spouse (typically the wife) is one of the most practically consequential aspects of the law. The current law in Bangladesh provides limited tools for this purpose in the Hindu context: the maintenance provisions of the 1946 Act are available on judicial separation, but they are not comprehensive and their enforcement is difficult.

In the Indian Hindu Marriage Act, the provisions for permanent alimony and maintenance (Section 25) and for maintenance pendente lite or during proceedings (Section 24) have been extensively litigated and have produced a sophisticated body of case law addressing the factors relevant to the determination of maintenance. These factors include the income and other property of the parties, the parties' conduct, the needs of the claimant, and the needs of any children. The courts have also addressed the duration of maintenance obligations, the circumstances in which they should be varied or terminated, and the consequences of the recipient's remarriage.

A reformed Hindu marriage law for Bangladesh must include comprehensive provisions for financial support on marital breakdown. These provisions should not merely establish the principle of entitlement but should provide sufficiently clear and specific guidance to enable courts to make consistent and predictable orders. The development of clear guidelines, perhaps including guidelines issued by the Supreme Court or the Law Commission, for the quantum of maintenance would be a valuable supplement to the statutory framework.

CHAPTER THIRTEEN: CONTROVERSIES IN CONTEMPORARY HINDU MARRIAGE LAW

13.1 The Conservative Opposition and Its Arguments

The reform of Hindu marriage law in Bangladesh, and particularly the introduction of divorce, faces organized opposition from certain sections of the Hindu community who argue on theological, sociological, and political grounds that the existing law should not be changed. Understanding the arguments of the opposition clearly is essential for designing a reform strategy that engages with them seriously rather than merely dismissing them.

The most organizationally significant opposition has come from groups that describe themselves as defenders of Hindu tradition. In the context of the 2012 registration Act, such groups argued, as reported in international press coverage, that even optional registration was a "conspiracy hatched by foreign-funded charities" and an unacceptable interference with Hindu customs. The opposition to more comprehensive reforms, including divorce, is correspondingly more intense.

The arguments made by the conservative opposition can be grouped into three categories. The first is the theological argument: that the Hindu scriptures prohibit divorce and that any legislation introducing it is contrary to divine law and therefore illegitimate. We have addressed this argument at length in the earlier sections of this chapter. The textual tradition does not categorically prohibit divorce; it contains provisions recognizing circumstances in which marital separation is permissible; and the tradition's own principle of Dharmic adaptation to changed circumstances provides the internal theological resources for legislative reform.

The second category is the sociological argument: that divorce would destabilize the Hindu family and harm women and children who depend on marriage for their security. We have

addressed this argument as well, noting that it misidentifies the relevant comparison and that the Indian experience does not support the claim that divorce law has been socially destructive in the Hindu community.

The third category is the political argument: that reform will be used by Muslims or by secularizing forces to weaken Hindu religious identity and community cohesion. This argument has more psychological resonance within a community that has experienced real persecution and feels its cultural survival to be at risk. But it is based on a false identification of Hindu religious identity with particular legal rules about marriage. The Hindu tradition's religious identity is constituted by its theology, its ritual practice, its philosophical vision, its community life: it is not constituted by the absence of a divorce law. Introducing divorce does not make Hindus less Hindu; it makes them legal equals of their fellow citizens.

13.2 The Progressive Position and Its Challenges

The progressive advocates for Hindu marriage law reform in Bangladesh, including women's rights organizations, secular legal reformers, and members of the Hindu community who support reform, face challenges that go beyond merely answering the conservative opposition's arguments. They must also navigate the political environment of Bangladesh in 2025 and 2026, which is complex and in some ways less favorable to minority community reform than it might appear.

The July 2024 revolution that removed the Awami League government was animated by principles of equality and justice that seem congruent with the reform agenda. But the revolution has also created a political environment in which Islamist forces are more prominent, in which the interim government is under pressure from multiple directions, and in which the situation of the Hindu community has been marked by violence and insecurity rather than by the conditions of peaceful advocacy that sustained reform requires.

The progressive advocates must therefore pursue a dual strategy: engaging with the immediate crisis of communal violence and legal vulnerability that the Hindu community faces in the post-revolution environment, while also maintaining a long-term focus on the structural legal reforms that are needed to address the underlying injustices of the personal law system. These two objectives are not contradictory but they require different kinds of advocacy and different institutional relationships.

The international dimension of this advocacy is also significant. Organizations including the USCIRF, (Human Rights Watch), Amnesty International, and the United Nations Human Rights Office have documented the situation of the Hindu community in Bangladesh in recent years and have called for better protection of minority rights. Connecting the specific reform agenda for Hindu personal law to this international human rights framework can provide additional leverage for domestic advocacy.

CHAPTER FOURTEEN: PROPOSED LEGISLATIVE FRAMEWORK FOR REFORMED HINDU MARRIAGE LAW

14.1 The Architecture of a Comprehensive Hindu Marriage Act for Bangladesh

Drawing on the analysis of all the preceding chapters, we are now in a position to sketch the architecture of a comprehensive Hindu Marriage Act for Bangladesh. This sketch is not a draft statute; that would require the work of a formal legislative drafting exercise conducted by the Law Commission with community consultation. But it provides the intellectual framework and the principal content of what such a statute should contain.

The proposed Act should be organized in the following structure:

Chapter I: Preliminary provisions, including the short title, commencement, extent of application, and definitions. The definitions chapter should provide clear and inclusive definitions of Hindu (following the Indian model in including Buddhists, Jains, and Sikhs within the Act's scope, unless these communities express a preference for separate treatment), of marriage, of void marriage, and of voidable marriage.

Chapter II: Conditions for a valid Hindu marriage. This chapter should set out the essential conditions: both parties must be Hindu; neither party must have a subsisting valid prior marriage; both parties must have attained the minimum age (18 for women, 21 for men, consistent with the Child Marriage Restraint Act of 2017); both parties must give their free and voluntary consent; neither party may be within the prohibited degrees of relationship. The chapter should expressly provide that no marriage is invalid solely on account of the parties being of different castes.

Chapter III: Ceremonies for a Hindu marriage. This chapter should provide that a Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party, and that where these ceremonies include the Saptapadi, the marriage is complete and binding on the completion of the seventh step. The chapter should also provide for the Sindur Daan and other customary ceremonies as additional (though not essential) elements of the marriage celebration.

Chapter IV: Compulsory registration of Hindu marriages. This chapter should provide that every Hindu marriage solemnized in Bangladesh must be registered within 30 days of solemnization; that the responsibility for registration lies on both parties and on the officiating priest; that a designated Hindu marriage registrar shall be appointed in each upazila; that the registration fee shall be minimal or waived for economically marginalized parties; and that non-registration is an offence subject to a civil fine. The chapter should also provide that registration creates a rebuttable presumption that the marriage took place and that the parties satisfied the conditions for a valid marriage.

Chapter V: Void marriages. This chapter should provide that a marriage is void if it contravenes the conditions relating to subsisting prior marriage, prohibited degrees of relationship, or age; if

it was contracted without the genuine consent of one or both parties; or if it was contracted with a party who lacked the mental capacity to consent.

Chapter VI: Voidable marriages. This chapter should provide for the annulment of marriages that were valid when contracted but which are rendered voidable by subsequent discovery of specified circumstances: non-consummation due to respondent's impotence; concealment of material facts at the time of marriage; pregnancy by another at the time of marriage; or other circumstances to be specified.

Chapter VII: Grounds for divorce. This chapter should provide for divorce on fault grounds (cruelty, adultery, desertion, conversion, mental disorder, communicable disease, renunciation); on no-fault grounds (mutual consent after 12 months' separation; irretrievable breakdown of the marriage after 3 years' separation); and on grounds available only to wives (additional grounds reflecting the specific vulnerabilities of women in the Bangladesh social context).

Chapter VIII: Procedure for divorce and ancillary matters. This chapter should provide for the jurisdiction of the family courts; mandatory conciliation or mediation before the hearing of a divorce petition; the evidentiary requirements for each ground; and the consequences of a decree of divorce.

Chapter IX: Maintenance and financial provision. This chapter should provide for maintenance pending divorce proceedings; permanent alimony on divorce; lump sum financial provision in appropriate cases; and maintenance for children. The chapter should specify the factors to be taken into account in determining the quantum of maintenance.

Chapter X: Custody and guardianship of children. This chapter should provide that in all matters of custody and guardianship, the welfare of the child is the paramount consideration; that both parents have equal prima facie entitlement to custody; and that the court shall take into account the wishes of the child (where the child is of sufficient age to express a preference), the capacity of each parent to provide for the child's needs, and all other relevant circumstances.

Chapter XI: Miscellaneous provisions, including the relationship of the Act to other laws, transitional provisions for marriages contracted before the Act's commencement, and provisions for the revision and regular review of the Act to ensure it remains responsive to changing social conditions.

14.2 The Process of Reform

The substantive content of the proposed legislation is important, but the process by which it is developed and enacted is almost equally so. A reform law that has been developed without genuine community consultation, that has been pushed through the legislature without adequate public debate, and that does not have the understanding and support of at least a significant proportion of the community it governs is likely to be resisted, ignored, or applied in bad faith by those charged with its implementation.

The reform process should begin with the commissioning of a comprehensive study by the Bangladesh Law Commission, in consultation with the Hindu community, women's rights organizations, legal experts, and other relevant stakeholders. The study should review the existing law, document the injustices it produces, survey community opinion about reform, analyze the comparative experience of India and Nepal, and produce a set of recommendations for legislative reform.

The study and recommendations should be published and made the subject of a period of public consultation, during which all interested parties have the opportunity to comment. The comments should be systematically reviewed and taken into account in the drafting of the proposed legislation.

The drafting process should involve both technical legal expertise (to ensure that the legislation is internally consistent, clear, and correctly situated within the broader legal framework of Bangladesh) and community engagement (to ensure that the specific concerns and cultural contexts of the Hindu community are properly reflected). The involvement of Hindu women's groups in the drafting process is particularly important, because they are the primary intended beneficiaries of the reform and have the most direct understanding of the injustices that the reform must address.

The legislative process should include full parliamentary debate, allowing both the detailed arguments for reform and the concerns of those who are skeptical of reform to be aired publicly and addressed. The government should make clear that the legislation is not an attack on Hindu religious identity but an expression of the commitment to equal citizenship that the constitution demands.

After enactment, the implementation of the legislation should be supported by: public awareness campaigns to inform the Hindu community of its rights under the new law; training of judges, lawyers, court staff, and police in the requirements and purposes of the new law; investment in the institutional infrastructure for implementation, including the appointment and training of Hindu marriage registrars throughout the country; and monitoring of implementation to identify and address problems as they arise.

CONCLUSION TO PART TWO

The Marriage Gate Must Open

The Hindu marriage law of Bangladesh is, as this Part has shown in extensive detail, a system of law that imposes extraordinary burdens on those it governs, particularly women, through the combination of an absence of divorce, inadequate maintenance provisions, arbitrary validity requirements, and a registration system that is voluntary in exactly the situations where it is most urgently needed. These burdens are not merely technical legal problems; they are sources of

deep, persistent, and daily human suffering for people whose legal situation the state has never considered it sufficiently important to address.

The contrast with the Indian position, where the Hindu Marriage Act of 1955 has been in force for seven decades, is particularly striking. India and Bangladesh share the same regional Hindu tradition, the same Dayabhaga school, the same cultural context in many respects. And yet in India, a Hindu woman trapped in an abusive marriage can divorce her husband; in Bangladesh, she cannot. In India, the law records Hindu marriages in a systematic registry; in Bangladesh, most Hindu marriages are not recorded anywhere. In India, the courts apply a clear statutory framework to the resolution of Hindu marriage disputes; in Bangladesh, the courts must piece together the applicable rules from colonial-era texts and cases decided by courts that no longer exist.

This difference cannot be explained by any principled legal or philosophical distinction. It cannot be justified by any feature of the Hindu tradition that applies in Bangladesh but not in India. It can only be explained by political factors: by the successive failures of political will that have left thirteen million citizens of Bangladesh governed by a marriage law that their government has never thought it important enough to reform.

The moment for reform is now. The post-revolution Bangladesh of 2025 and 2026, with its stated commitment to comprehensive legal reform and inclusive citizenship, provides a political window of opportunity that may not remain open indefinitely. The intellectual case for reform is overwhelming. The moral case is compelling. The constitutional obligation is clear. The international human rights commitment is binding.

The remaining fourteen parts of this treatise will continue to develop the case for reform across the other domains of Hindu personal law: inheritance, adoption, maintenance, guardianship, and the broader framework of legislative and institutional change that is needed to make formal legal reform a reality in the lives of Bangladesh's Hindu citizens. But the analysis of marriage law in this Part has established the central argument that runs through the entire work: that the law as it stands is unjust, that it must be changed, and that the philosophical, jurisprudential, historical, comparative, and constitutional resources for changing it are all available and compelling. The question is whether the political will exists to use them.

BIBLIOGRAPHY AND FURTHER READING FOR PART TWO

On the nature of Hindu marriage and the sacrament-contract debate: The recent decision of the Indian Supreme Court in Dolly Rani v. Manish Kumar Chaudhary (2025), available through Indian legal databases, provides the most current authoritative judicial statement on the ceremonial requirements for a valid Hindu marriage and their relationship to the statutory framework. For the historical judicial development of the sacrament-contract question, the cases of Tikait v. Basant, Shivonandh v. Bhagawanthumma (1961), and Bhagwati Saran Singh v. Parmeshwari Nandar Singh are the foundational decisions. Werner Menski's Hindu Law: Beyond

Tradition and Modernity (OUP, 2003) provides the most comprehensive jurisprudential analysis of the dual character of Hindu marriage.

On Hindu marriage law in Bangladesh specifically: The publication by BLAST (Bangladesh Legal Aid and Services Trust) titled "Legislative Initiatives and Reforms in Family Laws" provides an essential overview of the family law framework including the Hindu marriage context. The essay by Bipasha Rani Paul published in Eurasia Review in January 2025 offers a recent practitioner's perspective. Legal practitioners' guides available on Bangladeshi legal information platforms (including lawhelpbd.com and advocacylegalbd.com, updated through 2025 and 2026) document the current state of the law as practitioners encounter it.

On the Hindu Marriage Act of India and its development: A.M. Bhattacharyya's Hindu Law and the Constitution (Eastern Law House, 2012) provides an authoritative commentary on the Act in the constitutional context. Paras Diwan's Modern Hindu Law (Allahabad Law Agency, multiple editions) is the standard practitioner's reference in India. Archana Parashar's Women and Family Law Reform in India (Sage, 1992) provides the feminist jurisprudential analysis. The Indian Law Commission's reports on Hindu marriage law reform, particularly those produced in the 1970s and 1980s, document the legislative development of the Act over time.

On comparative marriage law reform in South Asia: Nepal's National Civil Code of 2017 (available in official English translation) illustrates the most comprehensive recent reform of marriage law in the region. The comparative analysis in Susan Dwyer Amussen's An Ordered Society (1988) and Sally Engle Merry's Human Rights and Gender Violence (2006) situate the Bangladesh reform challenge within the global literature on gender, law, and social transformation.

On the advocacy dimensions: Reports by international human rights organizations including (Human Rights Watch) (2025 and 2026), USCIRF (2025), and the UN Human Rights Office documenting the situation of Hindu minorities in Bangladesh provide the international human rights framework within which the domestic reform advocacy should be situated.

The Third Part of this treatise will examine the Hindu law of inheritance and succession in Bangladesh in depth: the detailed rules of the Dayabhaga system, the widow's estate and the case for its abolition, the daughter's inheritance rights, the Stridhana property regime, the Hindu Women's Rights to Property Act of 1937 and its limitations, and a comprehensive program of legislative reform informed by the Indian Hindu Succession Act of 1956 and its 2005 amendment.

PART THREE

The Architecture of Inherited Injustice: The Dayabhaga System of Succession, the Widow's Estate, the Daughter's Exclusion, Stridhana, and the Comprehensive Reform of Hindu Inheritance Law in Bangladesh

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PREFATORY NOTE TO PART THREE

The domain of inheritance is the domain of consequence. It is where the abstract structures of law become the concrete realities of a woman's survival, a family's continuity, a community's relationship to land and resources across generations. When we speak of the Hindu law of inheritance as it operates in Bangladesh today, we are not speaking of a theoretical exercise or an antiquarian curiosity. We are speaking of a set of rules that determine, with daily and immediate practical effect, whether a widow retains any meaningful stake in the home she has shared with her husband for decades, whether a daughter can claim any portion of the property her father spent a lifetime building, whether a granddaughter can receive the property her grandmother cherished as her own most intimate possession. We are speaking of rules that have been allowed to persist, unreformed and unexamined, since before the birth of the state that now claims sovereignty over the people who live under them.

Part Two of this treatise examined the Hindu marriage law of Bangladesh in exhaustive detail, demonstrating the multiple layers of injustice embedded in a system that denies divorce, fails to register marriages, and leaves women without adequate maintenance when marriages fail. Part Three turns to what is arguably the even more consequential domain of Hindu personal law: inheritance and succession. For it is through the rules of inheritance that the most significant inter-generational transfers of wealth take place, that the relative economic positions of men and women are determined or entrenched, and that the legal system signals most clearly whether it regards women as full legal persons capable of holding and exercising property rights or as temporary custodians of male-owned property with interests that expire at death and revert to the male line.

The analysis proceeds through fifteen chapters, each addressing a distinct dimension of the problem. We begin with the jurisprudential theory of the Dayabhaga school and its distinctive approach to inheritance. We then examine in detail the specific rules governing different categories of heirs: the widow, the daughter, the mother, the granddaughter, the more distant female heirs. We analyse the Stridhana property regime, which represents the one domain in which the classical tradition accords women something closer to full property rights. We examine the two principal statutory modifications of the classical Dayabhaga rules that are operative in Bangladesh: the Hindu Women's Rights to Property Act of 1937 and the Hindu Inheritance (Amendment) Act of 1929. We turn to the domain of testamentary succession. We investigate the remarkable 2023 judgment of the Appellate Division of the Supreme Court of Bangladesh in Shishubar Dhali and Others versus Chitta Ranjan Mondol and Others, which represents the most significant judicial engagement with the constitutional dimensions of Hindu inheritance law in the country's history. We examine the comparative landscape of India's Hindu Succession Act of 1956 and its transformative 2005 amendment, most recently given fullest effect by the Indian Supreme Court in Vineeta Sharma versus Rakesh Sharma in 2020. And we develop, building on all of this analysis, a detailed legislative proposal for a comprehensive Hindu Succession Act for Bangladesh.

Throughout, the analysis situates the legal rules within their philosophical, jurisprudential, historical, and political contexts. The inheritance law of Dayabhaga Bangladesh is not an isolated technical domain. It is connected to the deepest questions of how a civilization has understood the relationship between living persons, deceased ancestors, divine obligation, property, and the obligations of family members to one another. It is connected to the colonial history of how British administrators selected and rigidified certain Hindu legal practices while suppressing others. It is connected to the postcolonial political history of a Bangladesh that has repeatedly failed to find the political will to reform laws that its founding documents condemn. And it is connected to the contemporary moment of a Bangladesh in transition, emerging from the upheaval of 2024, claiming a new commitment to equal citizenship, and facing the test of whether that commitment extends to thirteen million Hindu citizens who have waited too long for the law to catch up with their humanity.

CHAPTER ONE: THE JURISPRUDENTIAL THEORY OF THE DAYABHAGA SCHOOL OF SUCCESSION

1.1 The Founding Text and Its Author

The Dayabhaga school of Hindu law takes its name from a text, the Dayabhaga, composed by the great Bengali jurist Jimutavahana, who flourished probably in the eleventh or twelfth century CE, though some scholars place him as late as the early thirteenth century. The precise dates of Jimutavahana's life and work remain a subject of scholarly debate, but what is certain is that the Dayabhaga, which means literally a treatise on the division of inheritance, represents one of the most original and intellectually rigorous works in the entire tradition of Hindu jurisprudential writing. Where earlier Sanskrit legal scholarship had largely been content to compile and reconcile the diverse provisions of the various Smritis, Jimutavahana subjected the received tradition to critical analysis, identified internal contradictions in earlier authorities, and constructed a systematic theory of inheritance grounded in a single organizing principle that distinguished his approach sharply from that of the competing Mitakshara school.

To understand why the Dayabhaga school continues to govern Hindu Bangladeshis and why its specific rules create the injustices that this Part examines, it is necessary to understand that organizing principle, the principle of pinda or spiritual efficacy, with some care. The entire structure of Dayabhaga inheritance law flows from this one theoretical commitment, and unless that commitment is grasped, the specific rules of the system will appear arbitrary when in fact they have a rigorous internal logic, a logic that, as we shall see, carries both conservative and potentially reformist implications.

1.2 The Pinda Theory and Spiritual Efficacy as the Basis of Succession

The central question that any system of inheritance law must answer is: by what principle do we determine who is entitled to succeed to the property of a deceased person? Different legal systems have answered this question differently. Roman law gave primary weight to the

testamentary intention of the deceased. English common law gave primary weight to blood relationship and, within blood relationships, to primogeniture. Modern statutory systems typically combine considerations of blood relationship with considerations of practical dependency and the need to provide for surviving family members.

The Dayabhaga school answers this question with a bold and distinctive theory: the right to inherit property is determined by the capacity to offer spiritual benefit to the deceased and to the deceased's ancestors. Specifically, the right to succeed is determined by the capacity to offer pinda, the ritual rice-balls that are the central offering in the Hindu funeral rites known as Shraddha. The person who can offer pinda most effectively for the spiritual benefit of the deceased is the person most entitled to inherit the deceased's property.

This theory, which P.V. Kane called Jimutavahana's most original contribution to Hindu legal thought, has a number of consequences that distinguish Dayabhaga from Mitakshara. First, it means that the question of who can inherit is not simply a question of blood relationship but a question of ritual capacity. Those who can offer pinda most efficaciously are those most entitled to the property. Second, and critically for the status of women under the system, it means that the capacity of women to inherit is bound up with questions about their ritual status and their capacity to offer the appropriate rites. The limitations on women's inheritance rights in Dayabhaga are not, from the internal perspective of the system, arbitrary expressions of male power; they are consequences of a theological theory about ritual capacity and spiritual efficacy.

Third, and this is a consequence that actually distinguishes Dayabhaga favourably from Mitakshara in certain respects, the pinda theory led Jimutavahana to reject the Mitakshara doctrine that property rights arise by birth. In the Mitakshara system, a son acquires a right in his father's property at the moment of his birth; the joint family property is held by all male members of the family together, and no individual member can alienate his undivided share without the consent of the others. In the Dayabhaga system, property rights do not arise by birth; they arise at the moment of succession, that is, at the death of the owner. Before the owner's death, other family members have no vested property right in the owner's property, even if they are living together as a joint family. This gives the Dayabhaga system a somewhat more individualistic character than Mitakshara: the owner has considerably wider powers of alienation and testamentary disposition over his property than his counterpart in a Mitakshara joint family.

1.3 Dayabhaga and Mitakshara: The Fundamental Distinctions

The contrast between the Dayabhaga school that governs Hindu Bengalis and the Mitakshara school that governs Hindus in most of the rest of India is one of the most important structural features of Hindu law, and it has profound consequences for the reform agenda in Bangladesh. To understand this contrast, and to understand why the Indian Hindu Succession Act of 1956 and its 2005 amendment do not simply transplant into the Bangladesh context without modification, we must examine the principal differences between the two schools with some care.

The first and most fundamental difference, already noted, concerns the moment at which property rights arise. In Mitakshara, a son acquires a right in his father's ancestral property at

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birth. In Dayabhaga, rights arise only at succession, that is, only when the previous owner dies. This means that in Mitakshara, the joint family is held as a form of co-ownership with the rights of all male members already vested from birth; partition is the severance of an already-existing co-ownership. In Dayabhaga, what appears as a joint family is actually a family of individuals who happen to be living together and pooling resources, but each member's specific share does not vest until the moment of succession.

The second principal difference concerns the principle that determines the order of succession. In Mitakshara, the paramount principle is proximity of blood relationship (sapinda relationship defined by common ancestry). In Dayabhaga, the paramount principle is spiritual efficacy, the capacity to offer pinda. This difference produces different orders of succession in various circumstances, some more and some less favourable to women depending on the specific situation.

The third difference concerns the widow's rights in a joint family. In Mitakshara, the widow cannot take her husband's share in the undivided joint family property because her husband has no separate share to give; he holds an undivided interest that passes by survivorship to the other coparceners. Only if the husband had separated from the joint family before his death can the widow inherit his separate share. In Dayabhaga, because the joint family property is not held by survivorship but consists of quasi-severed shares that vest fully in each member, the widow can inherit her husband's share even if he dies undivided. This is actually a significant advantage for widows under Dayabhaga compared to Mitakshara.

The fourth difference concerns the concept of the coparcenary. In Mitakshara, the coparcenary, the group of persons who hold joint family property together, is a specific legal institution with defined rules about membership (essentially, males within four degrees of the original ancestor), the capacity for partition, the restraints on alienation, and the mode of devolution on death. In Dayabhaga, there is no coparcenary in this strict sense. What exists is a joint family with certain features resembling the Mitakshara coparcenary but without the same rigidity. This means that much of the conceptual apparatus of the 2005 amendment to the Indian Hindu Succession Act, which extends coparcenary rights to daughters, does not translate directly into the Dayabhaga context, which requires its own specific legislative solution.

These structural differences are not merely technical curiosities. They determine the specific shape of the injustices that women experience under the Dayabhaga system, and they shape the specific legislative solutions that are needed to remedy those injustices. Understanding them is a prerequisite to any serious engagement with Hindu inheritance law reform in Bangladesh.

1.4 The Order of Heirs under the Dayabhaga School

The Dayabhaga school arranges the heirs of a deceased person in a hierarchical order, governed primarily by the principle of spiritual efficacy. The most fundamental division is between three classes of heirs:

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The first class consists of the Sapindas, those who are connected to the deceased by the offering of pinda. Within the Sapindas, the order of succession is determined by the degree of spiritual benefit that the heir can confer on the deceased through the pinda offering. Sons rank first among the Sapindas, because a son's pinda offering provides the greatest spiritual benefit to his father. Then come grandsons (son's sons), then great-grandsons. Within the male lineal descendants, there is further ordering based on the degree of relationship. Among the female Sapindas, only five women are listed in the classical Dayabhaga as having the status of Sapinda heirs: the widow (wife), the daughter, the mother, the paternal grandmother (father's mother), and the great-paternal-grandmother (father's father's mother).

The second class consists of the Samanodakas, persons connected to the deceased through a more distant common ancestor, whose pinda offerings confer a lesser degree of spiritual benefit than those of the Sapindas. The Samanodakas take only in default of all Sapindas.

The third class consists of other remote relations and, ultimately, the state, which inherits as last resort when no qualifying heir exists.

This ordering, determined as it is by the principle of spiritual efficacy, produces a system in which the primary heirs are male descendants, and women occupy at best a secondary and qualified position. The consequences of this ordering, as they play out in the specific rules governing female heirs, are the subject of the chapters that follow.

CHAPTER TWO: THE PINDA THEORY AND ITS JURISPRUDENTIAL CRITIQUE

2.1 The Internal Logic of Spiritual Efficacy

The pinda theory of Dayabhaga succession is one of the most intellectually interesting features of Hindu legal philosophy, and it deserves examination not merely as an antiquarian curiosity but as a jurisprudential claim that has both its defenders and its critics. Understanding the internal logic of this theory, and then subjecting it to jurisprudential critique, is essential for developing a principled basis for reform that engages with the tradition rather than simply dismissing it.

The pinda offering in Hindu ritual practice is an offering of rice-balls made to the spirits of deceased ancestors during the Shraddha ceremonies. The ritual function of these offerings is to provide nourishment and spiritual sustenance to the ancestors in their life after death, to help maintain their connection to the living family, and to facilitate their eventual liberation from the cycle of rebirth. The person who offers pinda to a deceased person is performing a religious duty of the highest importance, and Jimutavahana's argument is that the property of the deceased should pass to the person who will most effectively discharge this religious duty.

From within the Hindu cosmological framework, this argument has considerable force. If property is understood as connected to the religious and cosmic obligations of the family line, if the proper transmission of property and the proper performance of religious duties are

understood as two dimensions of a single whole, then it makes sense that the right to the property should follow the duty to perform the religious rites. Jimutavahana is not simply asserting male preference; he is articulating a theory in which property rights and religious duties are inseparably linked.

This theory has been defended by modern scholars working within the Hindu legal tradition. The great legal scholar Gooroodass Banerjee, whose work on Hindu law became one of the most influential texts used in the colonial courts, argued that the Dayabhaga system, properly understood, represents a sophisticated and internally coherent legal philosophy that merits respect on its own terms. P.V. Kane, in his monumental History of Dharmasastra, acknowledges the intellectual originality of Jimutavahana's approach even while noting its limitations from the standpoint of gender equality.

2.2 The Jurisprudential Critique: Natural Law, Rights Theory, and the Limits of Spiritual Efficacy

The pinda theory of succession, whatever its internal philosophical coherence, is subject to powerful jurisprudential critiques from multiple theoretical traditions, and these critiques form the intellectual basis of the reform case that this treatise develops.

The first critique comes from within the Hindu tradition itself. The Manusmriti's verse 9.130, which declares that "the son is as one's own self, and the daughter is equal to the son; hence so long as she is there in her own real character, how can anyone else take his property," represents an internal Hindu textual tradition that supports equal treatment of daughters. The claim that only males can offer efficacious pinda has itself been contested within the Hindu scholarly tradition. Some authorities hold that women can and do offer pinda, particularly for their mothers' and grandmothers' souls. The Shishubar Dhali judgment of Bangladesh's Appellate Division, discussed in detail in Chapter Thirteen of this Part, relies on exactly this kind of internal textual argument to reach an egalitarian conclusion about daughters' inheritance rights over Stridhana.

The second critique comes from natural law theory. The argument that women should be excluded from inheritance because they cannot offer spiritually efficacious pinda depends entirely on a cosmological claim about the relative spiritual efficacy of male and female ritual offerings. This cosmological claim cannot be derived from reason alone, is contested even within the Hindu tradition, and cannot serve as the basis for a system of positive law in a secular constitutional democracy. John Finnis, in his reconstruction of natural law theory in Natural Law and Natural Rights, argues that the basic goods that ground natural law include property, in the sense of the right to a reasonable degree of control over the material conditions of one's life. A system that denies women any meaningful stake in the property of their family of origin or of their conjugal family, on the basis of a contested theological claim about ritual efficacy, fails to protect this basic good and is therefore unjust by the standards of natural law.

The third and perhaps most powerful critique comes from contemporary rights theory and constitutional jurisprudence. The argument that I want to develop here draws on the work of Ronald Dworkin, particularly his concept of rights as "trumps" against collective decisions. In

Dworkin's framework, rights are not simply policy preferences that can be traded off against other policy preferences. They are protections for individuals against the imposition of collective decisions that fail to treat those individuals with equal concern and respect. The right to inherit property, in a society where property is the primary means of securing economic independence and a meaningful range of life choices, is precisely this kind of right. When a system denies women the right to inherit on the basis of their gender, it fails to treat them with equal concern and respect; it treats them not as full persons but as instruments of male interests and male religious duties. This is not merely a policy error; it is a violation of a fundamental right.

2.3 The Colonial Distortion of the Pinda Theory

One of the most important insights of postcolonial jurisprudence as applied to Hindu law is the argument that what we have inherited as "traditional Hindu law" is not simply the ancient tradition unmodified, but a colonial construction that selected, rigidified, and in some respects distorted the tradition in ways that served British administrative interests. This argument, associated with scholars like Lata Mani, Uma Chakravarti, and most directly in the legal context with the work of Flavia Agnes and Werner Menski, has particular relevance to the inheritance law of the Dayabhaga school.

The British colonial courts, beginning in the late eighteenth century with the establishment of the Sadr Diwani Adalat, were required to apply "Hindu law" to Hindu litigants in matters of personal law. But what was Hindu law? The British administrators did not read Sanskrit, did not have the years of training required to navigate the complex and internally diverse tradition of the Dharmasastras and Nibandhas, and needed the tradition reduced to something manageable. They therefore employed pandits, learned Sanskrit scholars, as assessors whose task was to advise the courts on the applicable legal rules. And they privileged textual sources, written Sanskrit texts that could be identified, copied, and to some degree translated, over the diverse oral and customary practices that actually governed the lives of most Hindu families in Bengal.

This privileging of text over custom had several consequences that distorted the inheritance law in directions unfavourable to women. The most important is the consequence pointed out by feminist historians of law: that the texts privileged by the colonial courts, particularly the Manusmriti and the Dayabhaga itself in the form employed by the pandits, were read in their most restrictive sense regarding women's property rights. The more egalitarian strands of the textual tradition, the passages in various texts that supported more extensive rights for daughters and widows, were systematically downplayed. The concept of Stridhana, for instance, was in the ancient texts a broad and flexible category of women's personal property that gave women significant economic autonomy. But the colonial courts received a version of the law in which the boundaries of Stridhana were drawn more narrowly than the ancient authorities required, and in which the restrictions on women's alienation of their "limited" inherited property were drawn more broadly.

The result was a system that was more unfavourable to women than the ancient textual tradition, taken in its full complexity, strictly required. This is not merely a historical observation. It is an argument for reform: if the rules we are operating under are not the genuine ancient Hindu

tradition but a colonial distortion of that tradition, then reforming those rules is not an attack on Hindu cultural heritage but a restoration of a more authentic and more egalitarian version of that heritage.

CHAPTER THREE: THE WIDOW'S ESTATE: DOCTRINE, LIMITS, AND THE CASE FOR ABOLITION

3.1 The Nature of the Widow's Estate

The widow's estate, sometimes called the Hindu widow's estate or limited estate, is one of the most distinctive and, from the standpoint of gender justice, most objectionable features of the Dayabhaga system of succession. Understanding it precisely is essential to understanding the reform agenda.

Under the classical Dayabhaga rules, a widow who inherits property from her deceased husband does not inherit it in the same way that a son inherits from his father. The son who inherits his father's property takes it absolutely, with full powers of ownership, including the power to sell, mortgage, gift, or bequeath the property as he sees fit. The widow who inherits her husband's property takes it only as a limited estate, a widow's estate, with severely circumscribed powers. She can enjoy the income of the property and use it for her maintenance. She can manage it. She can perform acts of conservation and necessary repair. But she cannot alienate the property, that is, she cannot sell it, mortgage it, gift it, or bequeath it, except in cases of legal necessity. And when she dies, the property does not pass to her own heirs but reverts to the reversioners, the next male heirs of her deceased husband.

This distinction between absolute ownership and limited estate is not merely a technical legal distinction. It is a fundamental difference in legal status. The male heir who inherits absolutely is a full legal person with respect to that property; the property is his, and he can do with it as he sees fit. The widow who inherits as limited estate is, in a legally significant sense, not a full owner at all. She is closer to a life tenant or a usufructuary, a person who has the right to use and enjoy the property during her lifetime but not to dispose of it. And when she dies, the property is not hers to transmit to her own children or grandchildren or anyone she chooses; it goes back to the male line from which it came.

The concept of the widow's estate is deeply revealing of the underlying gender ideology of the classical system. A woman's function in the traditional conception is to maintain the male family line, to bear sons who will offer pinda to their male ancestors, and to serve as a custodian of family property until a male heir is available to assume full ownership. The widow who inherits her husband's property is not being given a right; she is being given a duty of stewardship, a responsibility to maintain the property on behalf of the male reversioners who will eventually inherit it from her. Her interest in the property is instrumental rather than intrinsic; it is a means to an end, the end being the eventual transfer of the property to a male heir, rather than an expression of her own dignity and autonomy as a legal person.

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3.2 The Hindu Women's Rights to Property Act of 1937 and Its Inadequacy

The principal statutory intervention in the Hindu inheritance law operative in Bangladesh is the Hindu Women's Rights to Property Act of 1937, enacted by the British Indian legislature. This Act was a partial and inadequate reform measure that took some steps towards improving the widow's position while fundamentally failing to address the core injustice of the limited estate doctrine.

The principal achievement of the 1937 Act was to extend the widow's inheritance rights in a joint family context. Under the Dayabhaga rules as they stood before the Act, the position of widows in relation to joint family property was complex and, in some respects, more favourable to widows than Mitakshara (as noted in Chapter One). But the Act clarified and extended these rights, providing that on the death of a Hindu male dying intestate, his widow would take the same share as a son, and that if there were no sons, the widow would take the entire property. This was a significant improvement in the formal entitlement of widows.

But the Act preserved the concept of the limited estate. The widow who took under the Act took only what the Act called "the same interest as a son," but this "same interest" was explicitly interpreted by the courts to mean a limited interest, an estate analogous to the widow's estate, rather than an absolute interest. The widow could enjoy and manage the property, but her powers of alienation remained restricted, and the property would pass to the reversioners on her death.

Section 3(3) of the 1937 Act explicitly provides that any interest taken by a Hindu widow under the Act shall be the limited interest known as a woman's estate, with full right to maintenance from the property. This express preservation of the limited estate doctrine in the 1937 Act means that the Act, despite its improvements to the widow's formal entitlement, did not address the fundamental problem of the limited estate. A widow in Bangladesh today who inherits property under the 1937 Act still takes only a limited estate; she is still not a full owner; and the property still reverts to the reversioners on her death.

This inadequacy of the 1937 Act is one of the most powerful arguments for comprehensive legislative reform. The Act was a partial and compromised measure, reflecting the political constraints of the colonial period, when the British government was reluctant to impose radical changes on Hindu personal law in the face of conservative Hindu opposition. Half a century after independence, Bangladesh continues to operate under this inadequate colonial statute, making compromises that even the British colonial government recognised as unsatisfactory but politically necessary. There is no principled reason why independent Bangladesh should be bound by the compromises that British colonial administrators made in 1937.

3.3 The Reversioners and the Problem of Family Pressure

The doctrine of the widow's estate is not merely an abstract legal category. It has very concrete consequences for the lives of widows in Bangladesh, consequences that go far beyond the formal legal disability of restricted alienation. The most significant practical consequence is the creation

of the class of reversioners, those who will inherit the property on the widow's death, and who therefore have a material interest in the widow's conduct and choices during her lifetime.

The reversioners, typically the sons and grandsons of the deceased husband, know that they stand to inherit the property when the widow dies. This knowledge creates a powerful incentive structure that shapes the widow's practical options in ways that can amount to severe coercion. If the widow seeks to exercise her right of alienation for legal necessity, the reversioners can challenge the alienation in court, arguing that the necessity was not genuine. If the widow remarries (which has other consequences under the law), the reversioners may argue that her interest in the property has terminated. If the widow seeks to live independently, the reversioners may use their expected future interest in the property as leverage to control her conduct.

The widow's estate doctrine thus creates a situation in which the formal legal protection offered by the widow's right to inherit is systematically undermined in practice by the structural pressure of the reversioners' interest. A widow who knows that everything she does with the inherited property may be challenged by the reversioners, and who may lack the resources or knowledge to defend such challenges in court, is not really free to exercise her theoretical legal rights. She is, in practical terms, a hostage to the goodwill of the very family members who stand to benefit from her death.

This analysis connects directly to the work of feminist legal theorists on what Martha Fineman has called the "vulnerability thesis," the argument that law must attend not merely to formal rights but to the material and structural conditions that determine whether formal rights can actually be exercised. Amartya Sen's capabilities approach, developed with Martha Nussbaum, provides another framework: the question is not merely whether a widow formally has certain rights but whether she has the real capability to exercise those rights, given her economic situation, her social position, her access to legal information, and the pressures she faces from family members with competing interests. Under this analysis, the widow's estate doctrine is doubly unjust: it denies the widow formal ownership, and it creates structural conditions that make even the limited rights she formally possesses practically ineffective.

3.4 The Concept of Legal Necessity and the Courts' Response

The one escape valve provided by the doctrine of the widow's estate is the concept of legal necessity. A widow holding a limited estate can alienate the property, despite her general incapacity to do so, if the alienation is necessary to meet legal obligations. Courts applying Hindu law in Bangladesh have interpreted this concept over many decades, and the body of case law on legal necessity constitutes one of the most practically significant areas of Hindu inheritance jurisprudence.

The courts have recognised several categories of legal necessity that justify alienation: the payment of the deceased husband's debts, the performance of the deceased husband's religious duties and funeral rites, the maintenance of the widow herself, the marriage of the daughter, and the discharge of taxes and other public obligations. These categories have been interpreted with varying degrees of generosity by different courts and in different periods.

The colonial and post-colonial case law on legal necessity reveals a persistent tension between two approaches. The more conservative approach, reflected in cases like Hanooman Persaud Pandey versus Babooee Munraj Koonweree, decided by the Privy Council in 1856 and remaining influential for over a century, emphasises the narrowness of the exception: the necessity must be genuine, the alienation must be proportionate to the necessity, and the widow must not use the concept of necessity as a pretext for alienating property for her own convenience. The more progressive approach, reflected in later cases and in the academic commentary of scholars like D.F. Mulla and P.V. Kane, argues that the concept of legal necessity should be interpreted broadly enough to allow the widow to manage the property in a way that genuinely serves the needs of the family, including her own needs, without requiring her to obtain judicial sanction for every significant decision.

The problem with both approaches, from the standpoint of the reform case, is that they accept the fundamental premise of the widow's estate doctrine, that the widow has only a limited interest and must justify any departure from passive stewardship as necessary. This acceptance of the fundamental premise is what reform must challenge. The question is not how widely or narrowly to interpret legal necessity but whether the concept of a limited estate, with its implicit denial of the widow's full personhood and legal agency, should survive at all in a constitutional democracy committed to equality and non-discrimination.

CHAPTER FOUR: THE DAUGHTER'S POSITION IN THE DAYABHAGA SYSTEM

4.1 The Classical Rules and Their Hierarchy

The position of the daughter in the Dayabhaga system of succession is, from the standpoint of gender justice, even more problematic than that of the widow. While the widow at least inherits something, even if only a limited estate, the daughter under the classical Dayabhaga rules inherits almost nothing, and only in very restricted circumstances.

The classical rule, derived from Jimutavahana's Dayabhaga and from the Yajnavalkyasmriti on which it is based, is that among the Sapindas, the order of succession gives absolute priority to male lineal descendants: son, son's son, son's son's son. Only in the complete absence of any male lineal descendant does the daughter take. And even then, as one of five female Sapindas, the daughter's right is subject to the prior right of the widow and is itself a limited estate rather than absolute ownership.

More specifically, the rules governing the daughter's right to inherit from her father under Dayabhaga are as follows. The daughter takes in default of sons and their lineal male descendants (sons, grandsons, great-grandsons). If the father leaves a son, any grandson, or any great-grandson, the daughter takes nothing from her father's estate. If the father leaves a widow but no male descendant, the widow takes first, and the daughter takes only on the widow's death. If the father leaves no widow and no male descendant, the daughter inherits the property, but as a limited estate, not absolutely.

There is an additional restriction that is particularly striking from the perspective of gender justice: the rule that a daughter who is barren (who has no children) is excluded from inheritance entirely. This rule, derived from the pinda theory of the Dayabhaga, reflects the logic that a daughter who will bear no sons will eventually produce no pinda-offerings for her father's spirit, and therefore has less claim to his property than a daughter who might bear sons to perform this function. From within the pinda theory, this has an internal logic. From the standpoint of modern constitutional principles, it is a profoundly offensive provision that conditions a woman's right to property on her reproductive capacity.

4.2 The 1929 Amendment and the Addition of More Female Heirs

The Hindu Law of Inheritance (Amendment) Act of 1929 was a statutory intervention in the pre-independence period that added three further categories of female heir to the list of Sapindas for the purposes of succession to a Hindu male's property. Section 2 of the Act added the son's daughter, the daughter's daughter, and the sister to the list of heirs who could inherit from a Hindu male dying intestate, in addition to the five female Sapindas already recognised by the classical law.

This 1929 amendment was a limited reform. It extended the formal recognition of female heirs but did not address the fundamental problem of the limited estate. The women who take under the 1929 amendment, like the women who take under the classical rules, take only limited estates. The property they inherit will revert to the reversioners on their death. The amendment improved the formal position of certain categories of female heirs without addressing the structural injustice of the limited estate doctrine.

Moreover, the 1929 amendment applies, according to its terms, to the Mitakshara school only. This creates one of the more bizarre anomalies of Hindu law in Bangladesh: an Act intended to benefit Hindu women in Bengal, which operates under the Dayabhaga school, may not strictly apply to those women at all because of a limitation in the Act's own scope. The Daily Star analysis on Hindu women's inheritance rights has noted this problem explicitly: the country has a Hindu Inheritance Act of 1929 that applies only to Mitakshara practitioners, whereas most Hindus in Bangladesh follow the Dayabhaga school. This creates a statutory gap in which a reform measure ostensibly applicable to Bangladesh is unavailable to the population it was presumably intended to serve.

The courts in Bangladesh have addressed this problem inconsistently. Some decisions have held that the 1929 Act's provisions should be applied to Dayabhaga Hindus by analogy, since the legislative intent was clearly to extend female inheritance rights and there is no good reason to restrict this extension to Mitakshara practitioners. Other decisions have taken a more literal approach, holding that the Act cannot apply to Dayabhaga Hindus because its express terms confine it to Mitakshara. This judicial inconsistency is itself a powerful argument for legislative reform that would provide a clear and definitive statutory framework applicable to all Hindu Bangladeshis regardless of school.

4.3 The Daughter's Position Compared to the Son's: A Critical Analysis

The contrast between the legal position of a son and that of a daughter under the Dayabhaga system, as applied in Bangladesh, is so stark as to require detailed examination. The son who inherits from his father inherits absolutely. He takes full ownership of the property, with the right to sell, mortgage, gift, or bequeath it. The property is his, and he can do with it whatever he wishes, subject only to the ordinary rules of property law. His right to the property is not conditional on his performing any particular religious duties, not conditional on his being married or having children, and not subject to any power of reversal or resumption by other family members.

The daughter who inherits from her father, in the rare circumstance in which she inherits at all, inherits a limited estate. Her right to the property is conditional on the absence of all male descendants and usually on the prior exhaustion of the widow's interest. Even having inherited, she cannot sell or mortgage or gift the property except for legal necessity. When she dies, the property goes not to her own children or grandchildren but back to the reversioners of her father's estate.

This contrast is not a matter of degree but of kind. The son is a full legal person with respect to the inherited property; the daughter is at best a temporary steward. The son's right to the property reflects and reinforces his status as a full member of the family line; the daughter's limited interest reflects and reinforces her status as a person who belongs ultimately to another family line, the family of her husband, and whose connection to her birth family is seen as temporary and instrumental.

From the perspective of Dworkin's theory of equality as equal concern and respect, this distinction is straightforwardly illegitimate. It treats daughters as less than full persons with respect to the property of their families of origin. It treats their interests as less important than their brothers' interests. It does so not on the basis of any relevant difference between daughters and sons as human beings, but on the basis of a gender category that, in the constitutional framework of Bangladesh, cannot justify differential treatment in matters of property rights.

4.4 The Social Consequences of Daughter's Exclusion

The legal exclusion of daughters from meaningful inheritance rights does not exist in a vacuum. It is connected to, and in significant ways causally responsible for, a range of social phenomena that have been extensively documented in studies of rural Bangladesh and in court records.

The first and most direct consequence is the economic dependence of women on their husbands and on their husbands' families. If a woman has no right to her father's property, if she has no economic independence derived from her family of origin, then her economic survival after marriage depends entirely on the goodwill of her husband and his family. This dependence is a structural factor in the perpetuation of domestic violence: a woman who cannot leave a violent marriage without becoming economically destitute has a profoundly constrained set of choices. The connection between women's property rights and their protection from domestic violence is

one of the most robustly established findings in the empirical literature on gender, law, and development.

The second consequence is the institution of dowry, which functions in significant part as an informal mechanism for transferring some portion of family wealth to daughters at the time of their marriage, in lieu of the inheritance rights they do not have. Studies of dowry practices in Hindu communities in Bangladesh have documented the extraordinary financial burdens that dowry demands place on families with daughters, leading to impoverishment, debt bondage, and in extreme cases to the abandonment or killing of female infants. The connection between the denial of inheritance rights and the perpetuation of dowry is not merely theoretical; it has been empirically documented in comparative studies across South Asia.

The third consequence is migration and conversion. The combination of property insecurity, lack of inheritance rights, and the particular vulnerabilities that these create in the context of communal violence in Bangladesh has been identified as a significant driver of both forced and voluntary migration of Hindu families from Bangladesh to India, and of conversion from Hinduism to Islam among Hindu women seeking the relatively better property rights that Muslim personal law provides.

These social consequences are not peripheral to the legal analysis; they are at the heart of it. A legal system that produces these consequences cannot claim to be serving the interests of those it governs. A government that allows this legal system to persist without reform cannot claim to be discharging its constitutional obligations to all its citizens equally.

CHAPTER FIVE: STRIDHANA AND THE PROPERTY OF WOMEN

5.1 The Classical Concept and Its Boundaries

Stridhana is the one domain of the Dayabhaga system in which women have traditionally been recognised as full owners rather than limited estate holders. The word Stridhana, composed of the Sanskrit words stri (woman) and dhana (property), means literally the property of a woman. It refers to a category of property that a woman holds as her own absolute property, free from the control of her husband or any other family member, with full power of alienation during her lifetime and with rights of devolution at death that are specifically her own rather than those of the reversioners of her husband's or father's estate.

The classical sources recognised several categories of property as Stridhana. The most traditional and least disputed category is gifts made to a woman in connection with her marriage, gifts from the bridegroom, gifts from the bride's family, and gifts from the groom's family made at the time of the wedding. These wedding gifts were understood as the woman's own property from the moment of their receipt, not subject to the husband's ownership or control, and not subject to the reversionary interest of the husband's family.

Beyond the wedding gift category, different authorities recognised additional categories of Stridhana with varying degrees of agreement. Property inherited by a woman from her father or mother was generally recognised as Stridhana. Property gifted to a woman by her husband during his lifetime, or bequeathed to her by will, was recognized as Stridhana. Property that a woman earned through her own skill or labour was, in the more progressive authorities, recognised as Stridhana, though this category was more contested.

The practical significance of Stridhana in the lives of women in Bengal and Bangladesh has been considerable. In a society where a woman's formal inheritance rights were severely restricted, Stridhana represented her principal economic resource, the property that was genuinely her own, that she could use for her own needs and purposes without the permission of male relatives, and that she could transmit to her own daughters as well as her sons.

5.2 The Distinction Between Stridhana and Other Female Property

The Dayabhaga system distinguishes sharply between two categories of property held by women: Stridhana, which the woman holds absolutely, and property inherited by the woman as a limited estate (sometimes called widow's estate or women's estate), which she holds only for her lifetime with reversionary rights in the male line.

This distinction, while conceptually clear, has been the source of enormous litigation in the courts of Bengal and Bangladesh over many decades. The central difficulty is that the same item of property can sometimes fall into either category depending on the circumstances of its acquisition. Property gifted to a woman by her husband or father may be Stridhana if the gift is clear and absolute. Property that the woman inherits from her husband as his widow is not Stridhana but limited estate. But what about property that the woman's mother owned as Stridhana and that the woman has inherited from her mother? Is this absolutely owned property (Stridhana inherited from the mother) or is it limited estate property that will revert to the mother's husband's reversioners?

The question of devolution of Stridhana at a woman's death has been particularly contentious. The general rule, accepted by most authorities, is that Stridhana devolves on the woman's death to her own heirs rather than to the reversioners of the man from whom it came. The woman's heirs for purposes of Stridhana succession include, under the classical rules, her husband, her sons, her daughters, and other relatives in an order that is different from the order for a man's property. But the precise ordering of these heirs, and particularly the question of whether daughters inherit Stridhana equally with sons, has been contested in ways that are highly significant for gender justice.

5.3 The Shishubar Dhali Case and the Absolute Nature of Daughters' Inheritance of Stridhana

The most significant recent judicial development in the law of Stridhana devolution in Bangladesh is the 2023 judgment of the Appellate Division of the Supreme Court in Shishubar Dhali and Others versus Chitta Ranjan Mondol and Others, reported at 18 SCOB 2023 AD 20.

This judgment, analysed in detail in Chapter Thirteen of this Part, held that daughters inherit their mother's Stridhana absolutely, in the same manner as sons. The judgment rejected the argument that a daughter who inherits Stridhana takes only a limited estate that will revert to the mother's husband's reversioners on the daughter's death.

The significance of this judgment for the present discussion is its recognition that within the classical Dayabhaga framework itself, read in its most authentic form and interpreted consistently with the constitutional principles of equality and non-discrimination, there is a strong basis for giving daughters full ownership rights over inherited Stridhana. The judgment represents both a significant advance in the law and a demonstration of the potential of judicial activism to partially ameliorate the injustices of the existing system.

But it also illustrates the limits of judicial activism as a means of achieving comprehensive reform. The Shishubar Dhali judgment addressed one specific category of property, Stridhana inherited from a mother, and one specific category of heir, the daughter's daughter. It did not address the much broader questions of the widow's limited estate in her husband's property, the daughter's exclusion from her father's property in the presence of male descendants, or the general framework of Dayabhaga succession. These broader questions require legislative action, not merely judicial interpretation.

5.4 Stridhana in Practice: Documentation, Disputes, and the Evidentiary Problem

The practical enforcement of Stridhana rights in Bangladesh faces serious evidentiary obstacles that are distinct from, though connected to, the legal limitations on the concept. The fundamental problem is that Stridhana property, particularly the traditional forms of wedding jewellery and gifts, is rarely documented in any formal way. There is no registration system for Stridhana. There are no standard forms for recording the transfer of jewellery and other personal property to a bride at the time of her marriage. The entire system depends on the memories and testimonies of family members and witnesses, which are inherently unreliable and subject to manipulation.

This documentation problem has several consequences. First, it makes it extremely difficult for a widow to establish in court what her Stridhana consists of, particularly if her husband's family disputes her account. Second, it creates opportunities for the husband's family to claim that what the widow describes as her Stridhana was actually a gift to the household or a loan rather than a gift to her personally. Third, it means that widows and daughters who seek to enforce their Stridhana rights must navigate a complex and expensive litigation process with uncertain prospects.

The reform of Stridhana law therefore requires not merely a clarification of the substantive rules but also the creation of practical mechanisms for documenting and enforcing Stridhana rights. A comprehensive Hindu Succession Act for Bangladesh should include provisions for the registration of Stridhana gifts at the time of marriage, the creation of a standard form for such registration, and the creation of a rebuttable legal presumption in favour of a woman's Stridhana claim where there is some evidence to support it.

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CHAPTER SIX: THE HINDU WOMEN'S RIGHTS TO PROPERTY ACT 1937 - A CRITICAL ANALYSIS

6.1 The Legislative History and Political Context

The Hindu Women's Rights to Property Act of 1937 was the product of a specific political and legislative context that deserves examination because that context shaped both the Act's achievements and its limitations in ways that are highly instructive for thinking about reform in Bangladesh today.

By the 1930s, the cause of Hindu women's inheritance rights had become a significant issue in the Indian reform politics of the period. The All India Women's Conference, founded in 1927, had been pressing for legislative reform of Hindu personal law, including inheritance law, for over a decade. The arguments they made were a combination of equality arguments (women should have the same property rights as men), welfare arguments (the denial of inheritance rights left widows in poverty and dependence), and pragmatic arguments (women who had contributed to the building up of family property through their domestic labour deserved a share in it).

The legislative response to these arguments, embodied in the 1937 Act, was characteristically cautious and compromised. The British government was anxious not to antagonise conservative Hindu opinion, which was strongly opposed to any changes in the personal law. The Act therefore improved the formal entitlement of widows while preserving the concept of the limited estate, giving women a larger share of the cake while ensuring that it remained a fundamentally different and inferior kind of cake from the one that men received.

The key provisions of the 1937 Act, as they apply in Bangladesh today, can be summarised as follows. Section 2 provides that where a Hindu dies intestate leaving no male issue but leaving female issue (including a daughter, daughter's daughter, son's daughter), the widow of the deceased shall, subject to the same conditions as a son of the deceased, be entitled to take the estate of the deceased in the same manner as if she were a son. Section 3 provides that the widow takes the same interest as the son would have taken. Section 3(3) specifies that the widow's interest is the limited interest known as a woman's estate.

The phrase "the same interest as a son" in section 3, read together with the specification that this interest is a limited estate, creates a logical tension that has been a source of interpretive difficulty. If the widow takes the "same interest" as a son, and a son takes absolutely, how can the widow's interest be limited? The answer given by the courts is that the "same interest" refers to the share of the property, not to the quality of ownership. The widow takes the same quantitative share as a son would have taken, but she takes it as a limited estate rather than as absolute ownership. This interpretation has been consistently followed by the courts, but it is open to challenge as a matter of statutory construction, and the challenge forms part of the reform case.

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6.2 The Concept of Limited Estate Under the 1937 Act: A Jurisprudential Examination

The concept of the limited estate, as preserved and applied by the 1937 Act, is one of the most conceptually contested aspects of Hindu women's property law. Its defenders argue that it represents an attempt to balance the competing interests of the widow (who needs maintenance and a place to live) and the reversioners (who have a legitimate interest in the continuity of family property within the family line). Its critics argue that it treats women as less than full legal persons and has no principled justification in a constitutional democracy committed to equality.

The defender's position can be reconstructed as follows. The family property that a widow inherits was built up, in many cases, not by her alone but by the collective labour and sacrifice of multiple family members across generations. The sons, grandsons, and other male relatives who are the reversioners have contributed to the building up of this property and have a legitimate claim on it. Allowing the widow to take the property absolutely would mean that if she remarried or if she had children from a previous marriage, the property could end up outside the family entirely. The limited estate doctrine is a compromise that secures the widow's maintenance while protecting the family's interest in the continuity of its property.

The critic's response is that this argument, whatever its pragmatic appeal, is fundamentally incompatible with the constitutional principle of equality. The interests of the reversioners do not and cannot override the fundamental right of the widow to be treated as a full legal person. If we accepted the logic of the limited estate, we would have to say that all heirs who might remarry or who might not use family property in the way the family prefers should take only limited estates, with reversionary rights in other family members. We do not say this for male heirs; we would find it absurd and offensive if someone suggested that a son should inherit only a limited estate because he might remarry or spend the money unwisely. The different treatment of the widow is not justified by any relevant difference; it is justified only by the gender category, which is precisely what the constitution prohibits as a basis for discrimination.

There is a further jurisprudential argument against the limited estate that deserves attention. Ronald Coase's theorem in economic analysis of law suggests that property should be allocated to the party who values it most and can put it to its most productive use. A widow who is dependent on the property for her maintenance and who has intimate knowledge of its management, accumulated over a lifetime of living on it and working with it, is in many cases the party best positioned to make productive use of it. Restricting her powers of alienation and management to the concept of legal necessity means that in many cases the property will be managed less productively than it could be, because the party with the greatest stake in its productive use is legally unable to make the management decisions that would maximise its productivity.

6.3 The Reversioners and Their Legal Position

The reversioners, those entitled to take the property on the widow's death by virtue of their position as the next heirs in the male line, are not merely theoretical figures in the Dayabhaga

system; they are legally defined persons with defined rights and duties during the widow's lifetime.

The most important right of the reversioners during the widow's lifetime is the right to challenge alienations made by the widow as not justified by legal necessity. This right of challenge is exercised in the civil courts by way of a suit for possession of the property, brought after the widow's death (or sometimes during her lifetime if the alienation is clear). The law on this point is elaborate and, as we have seen, has generated a substantial body of case law over many decades.

The reversioners also have the right to intervene in certain proceedings affecting the property during the widow's lifetime, for example in proceedings for the partition of joint family property where the widow's interest is one of several competing interests. They have a right to be heard on questions affecting the property's management and conservation, and they may in some circumstances seek court supervision of the widow's management of the property.

This legal position of the reversioners, taken as a whole, amounts to something close to a supervisory role over the widow's management of her inherited property. The widow is not merely a limited estate holder; she is a limited estate holder whose management decisions are subject to challenge by persons who have a financial interest in her making no decisions at all, or in her managing the property in a way that best preserves it for their eventual inheritance. This is a situation that is structurally prone to abuse and exploitation, and the documented experience of widows in Bangladesh confirms that this structural potential is frequently realised in practice.

6.4 Comparative Failure: India's Abolition of the Limited Estate

The contrast between the position in Bangladesh, where the limited estate doctrine survives in full force, and the position in India, where it was abolished by section 14 of the Hindu Succession Act of 1956, is one of the most practically significant aspects of the comparative analysis.

Section 14(1) of the Indian Hindu Succession Act of 1956 provides simply and powerfully: any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner. This one sentence abolished the widow's estate and the limited estate doctrine entirely for female Hindus in India. A widow in India who holds property inherited from her husband holds it absolutely; she can sell it, mortgage it, gift it, or bequeath it; it will pass to her own heirs, not to the reversioners of her husband's estate, when she dies.

The contrast with Bangladesh could not be more stark. In Bangladesh, the 1937 Act remains in force. The limited estate doctrine survives. The reversioners have their supervisory role. The widow is still, in legal terms, a temporary custodian rather than a full owner.

Section 14 of the Indian 1956 Act represents one of the clearest models for legislative reform in Bangladesh. Its language is simple, its effect is decisive, and its application to the Bangladesh

context is immediate and clear. The first and most important step in any proposed Hindu Succession Act for Bangladesh should be the adoption of a provision equivalent to section 14(1) of the Indian Act: that any property possessed by a Hindu woman, whether acquired before or after the commencement of the new Act, shall be held by her as full owner and not as a limited owner.

CHAPTER SEVEN: THE JOINT FAMILY, KARTA, AND PARTITION UNDER DAYABHAGA

7.1 The Dayabhaga Joint Family: A Distinctive Institution

The Hindu joint family, as understood in the Dayabhaga system, is a distinctive social and legal institution that plays a central role in the practical application of inheritance law in Bangladesh. Understanding the joint family in the Dayabhaga context is essential for understanding both the specific rules of succession and the practical context in which those rules operate.

In the Dayabhaga system, the joint family is a group of persons related by blood or adoption who live together and hold property in common, sharing income and expenses from a common fund. The defining feature of the Dayabhaga joint family that distinguishes it from the Mitakshara joint family is that its members do not hold the family property as coparceners with rights by birth. Each member's specific share does not vest until the death of the previous owner. This means that in the Dayabhaga system, the joint family is held together more by practical convenience and social custom than by the rigid legal structure of the Mitakshara coparcenary.

The Karta, or manager of the joint family, is the senior male member of the family who manages the family property for the benefit of all its members. The Karta's powers are extensive: he can enter into contracts on behalf of the family, alienate family property for family purposes (including purposes of legal necessity), represent the family in legal proceedings, and make decisions about the management and investment of family resources. But the Karta's powers, though extensive, are not unlimited, and the boundaries of those powers have been the subject of extensive litigation in the courts.

The practical significance of the Karta institution for gender justice in the Dayabhaga system is that the Karta is always a male. There is no female Karta in the classical system. A widow or daughter who is the oldest surviving member of a joint family cannot assume the role of Karta; that role passes to the next senior male member, even if that male is younger and less experienced than the woman who is formally excluded from it. This exclusion of women from the management role in the joint family is a further dimension of the gender inequality built into the Dayabhaga system, one that is distinct from, though related to, the question of inheritance rights.

7.2 Partition of Joint Family Property

Partition of the joint family property, the division of the common property into individual shares held separately by each family member, is one of the most important and frequently litigated areas of Hindu law in Bangladesh. Understanding the rules of partition is essential for understanding how the inheritance rights of women are, or are not, given practical effect.

In the Dayabhaga system, partition can be effected by agreement among the family members, or, failing agreement, by court decree. The principles governing partition under Dayabhaga differ in important respects from those under Mitakshara. Since Dayabhaga members do not hold shares by birth right, partition is not the severance of a pre-existing co-ownership but the allocation of specific shares out of a common pool. The allocation of shares on partition is governed by the same principles that govern inheritance: each living male adult member takes an equal share, and female members (widow, daughters) take shares as specified by the applicable rules.

The widow's right on partition has been the subject of considerable litigation. Under the classical Dayabhaga rules and the 1937 Act, the widow is entitled to take on partition the same share as a son. But she takes this share as a limited estate, not absolutely. And the reversioners' interest in the property means that the widow's share on partition, while securing her immediate maintenance, does not give her the long-term economic security that partition gives to male members.

The daughter, in the classical system, does not take a share on partition among the living male members unless there are no male members at all. The daughter's claims arise only on the death of the father, not during the father's lifetime as part of a partition among living members.

7.3 The Karta and the Widow: A Structural Conflict of Interest

The combination of the Karta institution with the rules governing the widow's limited estate creates a structural conflict of interest that deserves particular attention. When a husband dies leaving a widow and a son who becomes the Karta of the joint family, the widow and the son (as Karta) are in a structurally adversarial position with respect to the family property. The son, as Karta, manages the property and controls its income. The widow, as limited estate holder of her husband's share, is dependent on the son's (Karta's) management for her maintenance. And the son, as reversioner, will inherit the property absolutely when the widow dies.

This structural conflict of interest is a recipe for exploitation, and documented cases from Bangladesh and the wider region confirm that exploitation frequently occurs. The son, knowing that the property will eventually be his absolutely, has an incentive to manage it in ways that serve his interests (investment in the son's own business ventures, for example) rather than those of the widow (maximising the income available for her maintenance). The widow, knowing that challenging the son's management decisions will damage her relationship with the family member she depends on for her daily survival, frequently lacks the practical ability to assert her formal legal rights.

The reform of this situation requires not merely changes to the formal law but structural changes that give widows practical independence from the family members who are their reversioners. This means, at minimum, giving widows absolute ownership rather than limited estate, so that the reversionary interest disappears entirely and with it the structural conflict of interest. It may also mean providing institutional support for widows in managing inherited property, through legal aid services, financial literacy programmes, and dispute resolution mechanisms that are accessible without requiring the widow to confront her family in adversarial court proceedings.

CHAPTER EIGHT: TESTAMENTARY SUCCESSION UNDER HINDU LAW IN BANGLADESH

8.1 The Power of Testamentary Disposal under Dayabhaga

One of the genuinely distinctive features of the Dayabhaga system, as noted in Chapter One, is the comparatively extensive power of testamentary disposal that it accords to property holders. Because the Dayabhaga system does not recognise rights by birth in ancestral property (unlike Mitakshara), the owner of property in the Dayabhaga system can in principle dispose of his property by will, subject to certain obligations of maintenance.

This testamentary power is, in theory, available to women as well as men. A Hindu woman who holds Stridhana can dispose of it by will; a woman who holds a limited estate can, to a limited extent, bequeath the income from that estate. And a widower or bachelor who has no son can in principle bequeath his property to his daughter or to any other person he chooses, bypassing the intestate succession rules.

The Succession Act of 1925, which governs testamentary succession for all communities in Bangladesh except Muslims (who are governed by Muslim personal law), applies to Hindus in the matter of the formal requirements for a valid will. Under section 63 of the Succession Act, every Hindu will must be in writing, must be signed by the testator, and must be attested by at least two witnesses. Oral wills are not valid for Hindus under the current law.

8.2 The Limitations on Testamentary Power

The power of testamentary disposal under the Dayabhaga system is subject to important limitations. The most significant limitation is the obligation to provide for maintenance. A Hindu cannot by will disinherit a person to whom he owes an obligation of maintenance; he must make adequate provision for the maintenance of his wife, his dependent children, and other persons dependent on him before disposing of the remainder of his property by will.

A further limitation arises from the concept of the widow's estate. If a widow holds property as a limited estate, her testamentary power over that property is restricted. She can bequeath the income from the property for the duration of her life estate, but she cannot bequeath the corpus

of the property, which will pass to the reversioners on her death regardless of any attempt to bequeath it.

This limitation on the widow's testamentary power is one of the most frequently misunderstood aspects of Hindu inheritance law in Bangladesh. Many widows, and indeed many lawyers, do not appreciate that a will made by a widow purporting to bequeath property she holds as a limited estate will not be effective to transmit the corpus of the property to the beneficiaries named in the will. Courts have repeatedly had to set aside such wills and enforce the reversionary rights of the husband's male heirs.

The reform implication of this analysis is clear. The abolition of the limited estate doctrine, giving women full ownership over all property they hold, would simultaneously remove the limitation on their testamentary power. A woman who holds property absolutely can bequeath it as she sees fit. This would be a significant practical improvement for women in Bangladesh, allowing them to plan their own affairs, provide for their own children and grandchildren, and exercise the kind of autonomy over property that full legal personhood requires.

8.3 Testamentary Succession and Gender Justice

The interplay between testamentary succession and the intestate succession rules creates a further dimension of gender inequality that is worth examining. The capacity to make a will and to know that the will will be given effect is itself a form of power and autonomy. When people know that their property will pass according to their expressed wishes rather than according to rules they have no say in, they have a greater sense of control over their lives and futures. The denial of effective testamentary power to women, through the limitation on their power to bequeath limited estate property, is a denial of this form of autonomy.

Moreover, the practical accessibility of testamentary succession differs between men and women in ways that compound the formal legal differences. Making a valid will requires access to a lawyer, the ability to put one's intentions in writing, the literacy to understand a legal document, and the capacity to identify and locate the witnesses required for attestation. In rural Bangladesh, where many Hindu women lack formal education, have limited access to legal services, and face social constraints on their independent mobility, the practical requirements for making a valid will are often beyond their reach. A comprehensive reform of Hindu inheritance law must attend to these practical accessibility problems, not merely to the formal rules.

CHAPTER NINE: CONSTITUTIONAL CHALLENGES TO HINDU SUCCESSION LAW

9.1 The Constitution of Bangladesh and Its Equality Provisions

The Constitution of the People's Republic of Bangladesh, adopted in 1972 and subsequently amended multiple times, contains several provisions directly relevant to the question of gender

equality in Hindu personal law. These provisions form the constitutional framework within which any challenge to the existing inheritance law must be situated, and within which any reform legislation must be designed.

Article 27 of the Constitution declares that all citizens are equal before law and are entitled to equal protection of law. This provision, closely modelled on Article 14 of the Indian Constitution, is the fundamental equality guarantee of the Bangladeshi constitutional order. It establishes equality before the law as a constitutional right enforceable by the courts.

Article 28 provides that the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, or place of birth. Article 28(2) adds that women shall have equal rights with men in all spheres of the state and of public life. These provisions establish non-discrimination, including non-discrimination on grounds of sex, as a constitutional imperative.

Article 19 commits the state to ensuring equal opportunity for all citizens, with the specific obligation to ensure equal opportunity to all Bangladeshi citizens. This provision has been used in arguments for the reform of discriminatory personal laws as a positive obligation of the state, not merely a prohibition on discrimination.

Article 29, dealing with equality of opportunity in public employment, is less directly relevant to inheritance law but has been cited in broader arguments about the constitutional commitment to women's equality.

These constitutional provisions, taken together, create a strong constitutional basis for challenging the gender discriminatory features of Hindu succession law in Bangladesh. The widow's limited estate, the daughter's exclusion, the denial of coparcenary rights to women: all of these features discriminate against women on the basis of their sex. Under Articles 27 and 28, they would appear to be unconstitutional.

9.2 The Personal Law Exception and Its Constitutional Limits

The apparent force of the constitutional equality arguments against the discriminatory features of Hindu succession law runs into the problem of what might be called the personal law exception. Bangladesh, like India, has a system of personal laws under which different religious communities are governed by different rules in matters of family law and inheritance. The Muslim Personal Law (Shariat) Application Act of 1937, the Hindu personal law rules derived from the Dayabhaga school, and the Christian Marriage Act of 1872 and Divorce Act of 1869 all represent the application of community-specific rules to the personal affairs of members of those communities.

The question is whether this system of personal laws is itself constitutional, given the equality guarantees of the Constitution, and whether the personal law exception provides a constitutional justification for gender discriminatory rules within those personal laws.

The answer provided by the comparative constitutional jurisprudence of India and Nepal, and increasingly by the developing jurisprudence of the Bangladesh courts themselves, is that the personal law system as a whole may be constitutionally permissible as a matter of state policy respecting religious diversity, but the content of any personal law cannot escape constitutional scrutiny. The state is entitled to choose, as a matter of policy, to govern the personal affairs of different religious communities by different rules. But whatever rules it applies must be consistent with the constitutional guarantees of equality and non-discrimination. The personal law exception is not a blanket immunity for gender discriminatory rules; it is a permissible form of legal pluralism that remains subject to constitutional constraints.

This position, now well established in Indian constitutional law through a long series of Supreme Court decisions including Sarla Mudgal versus Union of India (1995), Danial Latifi versus Union of India (2001), and most recently Shayara Bano versus Union of India (2017), reflects a principled attempt to reconcile the constitutional values of equality and non-discrimination with the state's commitment to preserving religious diversity and cultural autonomy. The personal laws are allowed to differ between communities, but they are not allowed to discriminate in ways that violate the fundamental rights of their subjects.

9.3 Fundamental Rights Litigation and its Potential in Bangladesh

The possibility of challenging the discriminatory features of Hindu succession law through fundamental rights litigation in the courts of Bangladesh is one that has not yet been fully explored. The Shishubar Dhali judgment of 2023, discussed in detail in Chapter Thirteen, represents an important judicial step in this direction, but it addressed only one specific issue within the broader framework of Hindu inheritance law.

A systematic programme of constitutional litigation, designed to challenge the widow's limited estate, the daughter's exclusion, and the other discriminatory features of the Dayabhaga system, could potentially achieve significant reforms through judicial interpretation even without legislative action. But the limitations of this approach are also significant. Judicial reform through constitutional interpretation is necessarily incremental and case-specific; it cannot provide the comprehensive, systematic overhaul of the entire inheritance law framework that is needed. It is also expensive and time-consuming, requiring sophisticated legal representation that many Hindu women lack access to. And it creates uncertainty: different judges interpret constitutional provisions differently, and a judgment in one case may not establish a clear precedent for all similar cases.

The appropriate strategy is therefore one that combines judicial and legislative approaches: pursuing constitutional litigation to advance specific claims while simultaneously pressing for comprehensive legislative reform. The constitutional litigation serves the dual function of achieving immediate relief in individual cases and of demonstrating to the legislature the constitutional untenability of the existing law.

9.4 The State's Positive Obligation to Reform

A particularly powerful constitutional argument for legislative reform of Hindu succession law in Bangladesh derives from the theory of positive constitutional obligations. The traditional understanding of constitutional rights, derived from the liberal constitutional tradition of the nineteenth century, treats them primarily as negative rights, as prohibitions on government action that infringes freedom or equality. On this view, the constitution tells the government what it cannot do; it does not tell the government what it must do.

But contemporary constitutional jurisprudence, drawing on the transformative constitutionalism tradition associated with scholars like Karl Klare and Kimberle Crenshaw, argues that constitutions committed to substantive equality impose positive obligations on the state. Where a legal framework, whether enacted by the state or tolerated by the state, structurally denies the equality and dignity of a category of citizens, the state has an affirmative constitutional duty to reform that framework. Inaction, in the face of documented and systematic inequality, is not constitutional neutrality; it is constitutional failure.

Applied to the situation of Hindu women in Bangladesh, this argument has considerable force. The state knows that the Hindu personal law as applied in Bangladesh systematically denies the property rights of women. This has been documented by the Law Commission, by civil society organisations, by academic researchers, and by the courts. The state has been told that reform is needed; it has received proposals for reform legislation from the Law Commission (in 2012) and from civil society coalitions (the Hindu Ain Pronoyoney Nagorik Udyog's 2020 proposal). It has failed to act. Under the positive obligation theory, this continued failure is itself a constitutional violation, an ongoing denial of the equal citizenship of Hindu women in Bangladesh.

CHAPTER TEN: THE COMPARATIVE FRAMEWORK - INDIA'S HINDU SUCCESSION ACT OF 1956

10.1 The Legislative History of the 1956 Act

The Hindu Succession Act of 1956 was the culmination of a decades-long process of reform advocacy that had begun in the late nineteenth century and accelerated dramatically after Indian independence in 1947. The Act, along with the Hindu Marriage Act of 1955, the Hindu Minority and Guardianship Act of 1956, and the Hindu Adoptions and Maintenance Act of 1956, constituted what reformers called the Hindu Code, a comprehensive modernisation of Hindu personal law mandated by the constitutional commitment to equality and non-discrimination.

The drafting history of the Hindu Code Bills, which began under the chairmanship of Dr. B.R. Ambedkar as Law Member of the Constituent Assembly's Drafting Committee, is one of the most dramatic stories in the legislative history of postcolonial Asia. Ambedkar's original draft proposed radical reforms, including giving women absolute inheritance rights, abolishing the concept of the joint Hindu family for legal purposes, and eliminating the gender discrimination

embedded in the classical law. These proposals met fierce opposition from conservative Hindu politicians and religious leaders, who argued that the Code would destroy the Hindu family system and violate the religious freedom of Hindus.

The political compromise that produced the 1956 Act was therefore, like the 1937 Act before it, a compromise that achieved significant but incomplete reform. The most important achievement, for present purposes, was section 14, which abolished the widow's estate and gave women absolute ownership over all property they hold. This was a genuinely transformative provision, more significant in its practical consequences than any other single feature of the Act.

The 1956 Act also restructured the order of succession for Hindus dying intestate. It created a system of four classes of heirs (Schedule, Classes I, II, III, and IV), with different priorities for different categories of relatives. Critically, Class I heirs include not only sons and widows but also daughters, son's daughters, and other female relatives on a basis of relative equality with male relatives of equivalent relationship degree. The daughter who takes under the Indian 1956 Act takes absolutely, not as a limited estate holder.

10.2 The 2005 Amendment and Vineeta Sharma

The Hindu Succession (Amendment) Act of 2005 was the most significant further development of Indian Hindu succession law since the original 1956 Act. Its central achievement was the amendment of section 6 to extend coparcenary rights to daughters. Before the 2005 amendment, the Hindu joint family coparcenary was exclusively male; daughters could not be coparceners and could not claim a share in coparcenary property by birth. The 2005 amendment provided that a daughter of a coparcener shall, from the date of the commencement of the amendment, become a coparcener by birth in the same manner as a son.

The 2005 amendment was interpreted and given fullest effect by the Supreme Court of India in Vineeta Sharma versus Rakesh Sharma, decided by a three-judge bench in August 2020. This judgment, which has already been briefly mentioned in Part Two of this treatise, is the most important recent judicial development in Hindu succession law in the South Asian context and deserves detailed analysis.

The principal questions addressed in Vineeta Sharma were: whether the 2005 amendment applied to daughters whose fathers had died before the amendment came into force on September 9, 2005; and whether the provision of section 6(1), that a daughter becomes a coparcener "from the date of the commencement of this amendment," meant that daughters who were not born by that date could not claim coparcenary rights.

The Court's answers to these questions were decisive and unequivocal. On the first question, the Court held that the 2005 amendment operates retroactively rather than retrospectively: it means that daughters had coparcenary rights from the moment of their birth, irrespective of whether their fathers were alive on the date of the amendment. The right flows from birth itself, not from the amendment date. On the second question, the Court held that the phrase "from the date of the commencement of this amendment" applies to when the rights become legally enforceable, not

to when they were conceptually acquired. A daughter born before the amendment can claim coparcenary rights as long as those rights have not already been disposed of by partition or otherwise before the amendment came into force.

The significance of Vineeta Sharma for the Bangladesh reform project is both direct and indirect. Directly, it demonstrates that the extension of coparcenary rights to daughters is legally achievable, constitutionally grounded, and practically workable. Indirectly, it demonstrates the transformative potential of combining legislative reform with constitutional jurisprudence: the 2005 amendment provided the legislative mandate, and Vineeta Sharma gave that mandate its fullest possible effect through constitutional interpretation. Bangladesh needs its own version of both the 2005 amendment and Vineeta Sharma.

10.3 The Danamma Case and the Feminist Critique

The Supreme Court of India's judgment in Danamma alias Suman Surpur versus Amar (2018), decided before Vineeta Sharma and subsequently confirmed by it, addressed similar questions about daughters' coparcenary rights and provided a significant precedent for the further development of the law.

The Danamma judgment is particularly noteworthy for its explicit engagement with the feminist jurisprudential case for gender equality in succession law. The Court observed that the 2005 amendment was enacted to give effect to the constitutional values of equality and non-discrimination, and that it should therefore be interpreted in a manner that advances rather than retards those values. This is an example of what constitutional scholars call "constitutional purposivism," the approach of interpreting statutes in light of the constitutional values they are intended to advance.

The feminist jurisprudential critique of Hindu succession law, associated with scholars like Indira Jaisingh, Flavia Agnes, and Usha Ramanathan, argues that the historical exclusion of women from coparcenary rights is not merely a technical legal deficiency but a dimension of the broader system of gender oppression that denies women economic independence, reinforces their subordination within the family, and makes them vulnerable to violence and exploitation. The 2005 amendment and the Danamma and Vineeta Sharma judgments represent the Indian legal system's acknowledgment of this critique and its commitment to addressing the structural gender inequality embedded in the inheritance law.

10.4 Nepal's National Civil Code of 2017

While the Indian model is the most directly relevant comparative framework for Hindu inheritance law reform in Bangladesh, Nepal's experience with the National Civil Code of 2017 also provides instructive lessons. Nepal, which was a Hindu kingdom until 2008 and whose population is predominantly Hindu, undertook a comprehensive reform of its personal law framework with the 2017 Code, which replaced the previous Muluki Ain that had governed personal law matters since 1963.

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The 2017 Code is significant for several reasons. First, it represents a move towards a largely unified civil code governing personal law matters regardless of religious community, rather than a system of separate religious personal laws. This is a more radical approach than India's, which maintains separate personal law systems for different religious communities. Second, the Code provides for gender equality in inheritance rights across all communities, including Hindus. Daughters and sons have equal inheritance rights under the Code. Third, the Code reflects an attempt to reconcile the formal requirements of gender equality with the preservation of meaningful aspects of Hindu cultural practice, demonstrating that reform need not entail the complete abandonment of cultural tradition.

Nepal's experience is instructive for Bangladesh in several ways. It shows that a predominantly Hindu society can achieve comprehensive, gender-equal inheritance law reform. It demonstrates that such reform is compatible with the preservation of Hindu cultural identity and religious practice. And it illustrates that the political will for reform is achievable, even in a conservative social context, when the reform process is designed with care and the benefits of reform are clearly communicated to the public.

CHAPTER ELEVEN: INTERNATIONAL HUMAN RIGHTS LAW AND HINDU SUCCESSION IN BANGLADESH

11.1 CEDAW and the State Party Obligations

Bangladesh ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1984, making it one of the earlier states to accept the treaty's obligations. CEDAW, the most comprehensive international human rights instrument specifically addressing gender discrimination, imposes on states parties a comprehensive obligation to eliminate discrimination against women in all areas of law, including the law of inheritance.

Article 16 of CEDAW, dealing with equality in marriage and family law, provides that states parties shall ensure, on the basis of equality of men and women, the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment, and disposition of property. While article 16 addresses primarily the spousal relationship, its principles extend to the broader framework of family law within which inheritance rights are embedded.

Article 15 of CEDAW, dealing with equality before the law, provides that states parties shall accord to women equality with men before the law, and shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. The denial of full ownership rights to Hindu women under the limited estate doctrine is a direct violation of this provision: women do not have the same legal capacity as men in civil matters if they can only inherit a limited estate while men inherit absolutely.

Bangladesh has entered reservations to certain provisions of CEDAW, most notably articles 2 and 16(1)(c), on the ground of inconsistency with the provisions of the Islamic Sharia. But these

reservations do not extend to the Hindu personal law, and even if they did, reservations to fundamental provisions of CEDAW are of dubious validity under international law. The Committee on the Elimination of Discrimination Against Women has repeatedly called on Bangladesh to withdraw its reservations and to bring its personal law system into compliance with CEDAW's requirements.

11.2 The ICCPR, ICESCR, and Economic Rights

The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both ratified by Bangladesh, provide additional international law frameworks for the challenge to the existing Hindu inheritance law.

Article 3 of the ICCPR provides that states parties undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the Covenant. Article 14, the right to a fair trial and equality before the courts, has implications for the accessibility of legal remedies for Hindu women seeking to enforce their inheritance rights. Article 17, protecting the right to privacy and family, has been interpreted by the Human Rights Committee to include protections for women's property rights within the family.

Article 3 of the ICESCR, mirroring the ICCPR provision, requires states parties to ensure the equal right of men and women to the enjoyment of all economic, social, and cultural rights. Article 11, on the right to an adequate standard of living, has been interpreted by the Committee on Economic, Social and Cultural Rights to include the right of women to equal access to property, including inherited property, as a necessary component of an adequate standard of living.

11.3 The Human Rights Council and Universal Periodic Review

Bangladesh's periodic appearance before the United Nations Human Rights Council under the Universal Periodic Review (UPR) process provides an international accountability mechanism for the reform of Hindu personal law. In successive UPR reviews, member states of the Human Rights Council have raised concerns about gender discrimination in Bangladesh's personal law system and have recommended specific reforms.

In the 2018 UPR, several states made recommendations specifically addressing the need to reform personal laws, including Hindu personal law, to ensure gender equality. In the 2023 UPR, similar recommendations were made, with specific reference to the inheritance rights of Hindu women. Bangladesh has accepted some of these recommendations while noting others for further consideration.

The UPR process is not a binding enforcement mechanism; Bangladesh cannot be compelled to reform its law by the Human Rights Council. But the process creates political pressure and international visibility for the reform agenda, and it connects the domestic advocacy of civil society organisations in Bangladesh to the broader international human rights framework. The documentation produced in the UPR process, including the shadow reports submitted by

Bangladeshi civil society organisations, provides a rich resource for understanding the current state of reform advocacy and the specific concerns that international human rights bodies have identified.

11.4 The Sustainable Development Goals Framework

The United Nations 2030 Agenda for Sustainable Development, adopted in 2015 and to which Bangladesh is committed, provides another international framework for the reform agenda. Sustainable Development Goal 5, on gender equality, includes specific targets relating to women's property rights. Target 5.a calls on states to undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance, and natural resources, in accordance with national laws.

Bangladesh's Voluntary National Reviews under the SDG framework have addressed progress on SDG 5 in general terms, but the specific issue of Hindu women's inheritance rights has not been given the prominence it deserves in these reports. Connecting the reform advocacy for Hindu succession law to the SDG 5 target provides a further argument for the urgency and legitimacy of the reform project.

CHAPTER TWELVE: THE VESTED PROPERTY RESTORATION ACT AND ITS INTERSECTION WITH HINDU SUCCESSION

12.1 The Vested Property Problem and Its Connection to Succession Law

No analysis of Hindu property rights in Bangladesh can ignore what is perhaps the most consequential piece of legislation affecting Hindu property holdings in the country: the Enemy Property Act of 1965 (renamed the Vested Property Act after 1974) and its aftermath. While this Act is not formally a piece of Hindu personal law, its intersection with the rules of Hindu succession has created a complex and deeply unjust web of property dispossession that has affected Hindu families across Bangladesh for generations.

The Enemy Property Act of 1965, enacted during the period of Pakistan, declared the property of persons who had migrated to India to be "enemy property" subject to government seizure. After the liberation of Bangladesh in 1971, this Act was retained as the Vested Property Act, and properties that had been seized under it remained in government control or were distributed to political allies of successive governments. The consequence, which has been extensively documented by human rights organisations and researchers, is that vast quantities of property belonging to Hindu families who migrated to India, either temporarily or permanently, were seized by the state and never returned.

The connection to succession law is this: the question of who is entitled to bring a claim for the restoration of vested property turns in significant part on who has the right of succession to the

property under Hindu law. If a man whose property was seized has died, the claim for restoration must be brought by his heirs. But if the heirs are female, their capacity to bring and maintain such a claim may be affected by the limited estate doctrine and by the uncertainty of the succession rules. Courts and government officials who deal with vested property claims have sometimes used the complexity and ambiguity of Hindu succession law as a reason to deny or delay the resolution of such claims.

12.2 The Vested Property Return Act and its Limitations

The Vested Property Return Act of 2001, amended in 2011 and 2012, attempted to address the problem of vested property by providing a mechanism for the return of seized property to its original Hindu owners or their heirs. The Act has been criticised extensively for its inadequate implementation and for the numerous procedural obstacles that have prevented the majority of claimants from obtaining the return of their property.

From the perspective of Hindu succession law, the Vested Property Return Act raises several issues. First, it requires claimants to establish their title to the property, which in many cases involves proving Hindu succession, often under rules that are unclear or contested. Second, the Act's provisions about eligible claimants have been interpreted in ways that sometimes disadvantage female heirs, who must establish both their identity as heirs and the validity of their inheritance under the applicable succession rules. Third, the Act does not address the question of land grabbed from Hindu families by private persons rather than the state, which is a significant additional source of property dispossession.

The reform of Hindu succession law, including the abolition of the limited estate doctrine and the equal recognition of female heirs, would directly benefit Hindu women seeking to reclaim vested property. If a widow is recognised as the absolute heir of her husband's estate rather than as a limited estate holder, her capacity to bring legal proceedings for the recovery of vested property is correspondingly clearer and stronger. If daughters have equal inheritance rights with sons, the class of persons entitled to claim vested property on behalf of deceased Hindu property holders is correspondingly larger.

CHAPTER THIRTEEN: THE SHISHUBAR DHALI JUDGMENT AND JUDICIAL ACTIVISM IN HINDU SUCCESSION LAW

13.1 Facts and Procedural History

The judgment of the Appellate Division of the Supreme Court of Bangladesh in Shishubar Dhali and Others versus Chitta Ranjan Mondol and Others, reported at 18 SCOB 2023 AD 20, represents the most significant judicial engagement with the gender dimensions of Hindu succession law in Bangladesh's legal history. The case requires detailed examination both for its substantive legal analysis and for what it reveals about the potential and limits of judicial activism as a vehicle for reforming discriminatory personal laws.

The facts of the case centred on a property dispute arising from the devolution of Stridhana property. The central legal question was whether a daughter's daughter could lawfully inherit her grandmother's Stridhana. The traditional view, which had been applied by some lower courts, was that a woman's inherited property could only descend in certain limited ways and that daughters' daughters were not entitled to inherit absolutely from their grandmothers' Stridhana estates.

The Appellate Division rejected this traditional view in terms that went significantly beyond the resolution of the specific dispute before it. The judgment engaged with the foundational texts of the Dayabhaga school, including Jimutavahana's Dayabhaga itself and the commentaries of D.F. Mulla, Gooroodass Banerjee, and Golap Sastri. It also engaged with the constitutional provisions of Articles 27 and 28 of the Bangladesh Constitution, relating to equality before the law and non-discrimination on grounds of sex.

13.2 The Legal Analysis: Reading Dayabhaga Against Patriarchal Distortion

The most jurisprudentially significant aspect of the Shishubar Dhali judgment is its analysis of the Dayabhaga texts. The Appellate Division held that the original text of the Dayabhaga, when read carefully and in its entirety, supports the principle that daughters inherit Stridhana absolutely and equally with sons. The exclusion of daughters' daughters from inheritance, the Court held, was not required by the text of Jimutavahana's Dayabhaga but was a later patriarchal distortion introduced by commentators and colonial courts operating under the influence of a male-dominated interpretive tradition.

This analysis reflects the kind of internal critique of Hindu law that feminist legal scholars like Uma Chakravarti and Flavia Agnes have advocated: the argument that the classical texts, read in their authentic form, are less anti-women than the colonial and post-colonial interpretive tradition has made them. The Dayabhaga, on the Court's reading, contains internal resources for a more egalitarian interpretation. The patriarchal limitations attributed to it are not inherent features of the text but products of a distorting interpretive tradition.

The Court's reading of the scholarly authorities is also significant. The citation of D.F. Mulla, whose Principles of Hindu Law (multiple editions, most recently the 22nd edition of 2010) is the standard practitioner's reference on Hindu law in South Asia, and of Gooroodass Banerjee and Golap Sastri, represents an engagement with the tradition of Hindu legal scholarship that takes the internal resources of that scholarship seriously. The Court is not dismissing the tradition in the name of constitutional values; it is using the tradition's own best arguments to reach a constitutionally aligned conclusion.

13.3 The Constitutional Dimension of the Judgment

Alongside its textual analysis of the Dayabhaga sources, the Appellate Division in Shishubar Dhali grounded its judgment in the constitutional provisions of Articles 27 and 28. This constitutional grounding is significant for several reasons.

First, it establishes that the constitutional equality provisions apply to Hindu personal law and can be used to override or reinterpret rules of that law that are inconsistent with constitutional values. This is an important precedent for the broader constitutional challenge to Hindu succession law discussed in Chapter Nine.

Second, it illustrates the approach of harmonising the constitutional values of equality and non-discrimination with the textual tradition of Hindu law. The Court did not say that the constitutional provisions simply override the Hindu law; it said that the Hindu law, properly understood, is consistent with the constitutional provisions. This approach, which might be called constitutional harmonisation, has the advantage of respecting both the constitutional framework and the cultural tradition, rather than presenting them as in irreconcilable conflict.

Third, the constitutional grounding of the judgment means that its principles are available as precedents for further constitutional challenges to discriminatory features of Hindu personal law. A court faced with a challenge to the widow's limited estate or the daughter's exclusion from inheritance can now draw on Shishubar Dhali as authority for the proposition that the constitutional equality provisions require the inheritance law to be applied in a non-discriminatory manner.

13.4 The Limits of the Judgment and the Need for Legislation

Important as the Shishubar Dhali judgment is, it has significant limitations that underscore the case for comprehensive legislative reform rather than reliance on judicial case-by-case development.

The judgment addressed only one specific issue: the inheritance of Stridhana by a daughter's daughter. It did not address the widow's limited estate in her husband's property. It did not address the daughter's general exclusion from her father's property in the presence of male descendants. It did not address the structure of the order of heirs under Dayabhaga succession. It did not create a comprehensive framework for gender-equal Hindu succession.

Moreover, the judgment's analysis, while enlightened and constitutionally sound, leaves open questions about its application to cases that are similar but not identical to the specific facts of Shishubar Dhali. Courts in future cases will need to determine how far the principles of Shishubar Dhali extend beyond the specific context of Stridhana inheritance to the broader law of succession. This uncertainty is itself a problem: a comprehensive legislative reform would eliminate the uncertainty by providing clear statutory rules applicable to all aspects of succession.

There is also the practical problem of access to justice. A judgment of the Appellate Division of the Supreme Court, however progressive, benefits only those who can afford to litigate all the way to the highest court. The vast majority of Hindu women in Bangladesh who face property disputes will never reach the Appellate Division. They will deal with trial courts and district courts whose familiarity with the Shishubar Dhali judgment may be limited, and whose application of the judgment's principles may be inconsistent. Only a clear statutory framework,

supported by judicial training and public awareness, can translate the constitutional principles into consistent practical application at the level where most people experience the law.

CHAPTER FOURTEEN: THE PROPOSAL FOR A COMPREHENSIVE HINDU SUCCESSION ACT FOR BANGLADESH

14.1 The Case for Comprehensive Codification

The argument for comprehensive legislative reform of Hindu succession law in Bangladesh, as opposed to continued reliance on case-by-case judicial development and the patchwork of colonial statutes, rests on several distinct but mutually reinforcing grounds.

The first ground is clarity. The current law governing Hindu succession in Bangladesh is extraordinarily unclear. The rules are derived from multiple sources: the classical Dayabhaga texts, the commentaries and digests, the judicial decisions of the colonial and post-colonial courts, the Hindu Women's Rights to Property Act of 1937, the Hindu Law of Inheritance (Amendment) Act of 1929 (whose applicability to Dayabhaga practitioners is itself uncertain), and the Succession Act of 1925 for testamentary matters. Navigating this plurality of sources requires a level of legal expertise that most Hindus in Bangladesh lack, and that many lawyers in Bangladesh also lack. This opacity of the law is itself a form of injustice: people cannot plan their affairs, understand their rights, or seek effective legal advice when the applicable law is unclear even to trained lawyers.

Comprehensive codification, following the model of the Indian Hindu Succession Act of 1956 but adapted to the Dayabhaga context and to the specific needs of Bangladesh's Hindu community, would eliminate this opacity. A clear, accessible statute in Bengali, setting out the rules of succession in plain terms, would transform the practical accessibility of the law.

The second ground is consistency. The current law produces inconsistent judicial outcomes because different courts interpret the complex plurality of sources differently. A statutory framework would promote consistency by giving courts a single authoritative text to apply.

The third ground is equity. The current law is unjust in ways that have been documented exhaustively in this Part and in earlier parts of this treatise. A comprehensive Hindu Succession Act, designed with explicit commitment to gender equality, would remedy these injustices in a systematic and comprehensive way.

The fourth ground is democratic legitimacy. Law made by Parliament, through a process that includes public consultation, debate, and the deliberate choices of elected representatives (or, in the current extraordinary constitutional circumstances, of the interim government with appropriate democratic mandate), has a greater claim to democratic legitimacy than law derived from ancient texts interpreted by colonial courts. The Hindu community of Bangladesh deserves

a succession law that has been made for them and about them in the present, not merely inherited from a past in which they had no democratic voice.

14.2 The Structure of a Proposed Hindu Succession Act for Bangladesh

Drawing on the analysis of all preceding chapters, the comparative experience of India and Nepal, the constitutional framework of Bangladesh, and the latest reform proposals from civil society organisations including the Hindu Ain Pronoyoney Nagorik Udyog's 2020 proposal, the following legislative structure is proposed for a comprehensive Hindu Succession Act for Bangladesh.

The Act should be organised as follows:

Chapter I: Preliminary. This chapter should set out the short title, commencement, and the extent of application. The Act should apply to all persons who are Hindu by religion, including Buddhists, Jains, and Sikhs who are Hindu for the purposes of Hindu personal law, as well as to children of Hindu parents who are brought up as Hindu. The Act should also define key terms: "intestate," "heir," "property," "Stridhana," "joint family property," "Karta," "partition," "absolute interest," "testamentary succession," and others as needed.

Chapter II: Intestate Succession to the Property of a Hindu Male. This chapter should replace the current rules of the Dayabhaga school with a modern, gender-equal framework. The key provisions should include:

First, an order of heirs in which the following persons take as Class I heirs on an equal footing: widow, son, daughter, widow of a predeceased son, son of a predeceased son, daughter of a predeceased son, son of a predeceased daughter, daughter of a predeceased daughter. This order, modelled on the Indian Class I heirs under the 1956 Act but adapted to the Dayabhaga context, gives daughters the same formal entitlement as sons, a fundamental departure from the current law.

Second, an absolute ownership provision: every heir who takes under this Act shall take the property as full owner, with all powers of ownership, including the power to alienate, mortgage, bequeath, or otherwise deal with the property. This provision abolishes the limited estate doctrine in a single clause.

Third, a provision for the simultaneous inheritance of joint family property: where a Hindu male dies leaving a widow and other Class I heirs, all Class I heirs shall inherit simultaneously and in equal shares, rather than the current rule under which the widow takes first and daughters take only on the widow's death.

Chapter III: Intestate Succession to the Property of a Hindu Female. This chapter should replace the current rules governing the devolution of a woman's property, confirming the Shishubar Dhali principles and extending them comprehensively. The key provisions should include:

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First, all property held by a Hindu female shall be held by her as absolute owner, whether it was acquired before or after the commencement of this Act. This adopts the language of section 14(1) of the Indian 1956 Act.

Second, the heirs to the property of a Hindu female who dies intestate shall be: (a) her sons, daughters, widower, and children of predeceased sons and daughters (Class I); (b) her husband's heirs (Class II); (c) her parents (Class III); (d) her father's heirs (Class IV). Each class of heirs takes only in default of all heirs in the preceding class.

Third, within each class, all heirs shall take equally regardless of gender. Sons and daughters shall take equal shares in all circumstances.

Chapter IV: The Joint Hindu Family. This chapter should address the specific features of the Dayabhaga joint family that affect the application of succession law. It should include provisions clarifying that: the property of a joint Hindu family is the property of its individual members collectively; any member of the joint family, including female members, may demand partition; on partition, each member is entitled to an equal share; the Karta may be any adult member of the family, regardless of gender; and the dissolution of the joint family extinguishes all reversionary interests.

The provision allowing female members to demand partition is of particular importance. Currently, a widow who is a member of a joint family cannot demand partition; she can only assert her right to maintenance from the joint family property. If she could demand partition, she could obtain her share of the property as absolute owner and thereby escape the structural dependence of the joint family arrangement.

Chapter V: Stridhana. This chapter should confirm and extend the Shishubar Dhali principles regarding Stridhana. It should provide:

First, a comprehensive definition of Stridhana that includes all the traditional categories (wedding gifts, gifts from parents and in-laws, self-acquired property, inherited property from female relatives) as well as a residual category that captures all property that a woman has acquired in her own right.

Second, a clear statement that all Stridhana is the absolute property of the woman who holds it, with full powers of ownership and testamentary disposition.

Third, rules for the devolution of Stridhana on intestacy: sons and daughters shall inherit equally from their mother's Stridhana; failing them, the order of succession shall follow the order for the property of a Hindu female generally.

Fourth, provisions for the documentation and registration of Stridhana, including the creation of a Stridhana registration system that allows women to record their Stridhana property formally and creates a rebuttable presumption in favour of the registered owner.

Chapter VI: Testamentary Succession. This chapter should confirm the testamentary power of all Hindus and provide:

First, that every Hindu adult of sound mind may dispose of his or her property by will, subject to the obligation to make adequate provision for maintenance of dependants.

Second, that the Succession Act of 1925 shall govern the formal requirements for a valid Hindu will.

Third, that a woman who holds property as absolute owner (including property previously held as a limited estate, converted to absolute ownership by this Act) may bequeath that property freely by will.

Fourth, that no person may by will create a "limited estate" or restricted ownership in the sense previously known to Hindu law; any purported creation of a limited estate by testamentary instrument shall be treated as a gift of the absolute interest to the named beneficiary.

Chapter VII: Joint Family Partition Rules. This chapter should provide detailed rules for the partition of joint family property, including:

The procedure for demanding partition, the requirement of notice to all interested parties, the role of the courts in disputed partitions, the principles for valuing and dividing different categories of property, the entitlement of widows and daughters to shares on partition, and the consequences of partition for any pending claims against the joint family property.

Chapter VIII: Rights of Maintenance. This chapter should provide that:

Every Hindu has an obligation to provide maintenance for his or her spouse, minor children, and other dependent family members out of his or her own income and property. The obligation of maintenance should be mutual between spouses, not only a male obligation to the female. The Act should specify the factors relevant to determining the quantum of maintenance and the circumstances in which maintenance obligations can be varied or extinguished.

Chapter IX: Savings and Transitional Provisions. This chapter should provide that:

All existing wills and testamentary documents remain valid subject to the absolute ownership conversion in Chapter VI. All completed partitions and inheritance transactions remain valid. All pending litigation shall be decided in accordance with the new Act to the extent that the new Act gives greater rights to female heirs. The Law Commission shall be required to review the operation of the Act within five years and to report to Parliament on any amendments needed.

Chapter X: Miscellaneous. Including provisions for the appointment of a Hindu Succession Board to advise on the implementation of the Act, to develop public awareness materials, and to monitor the Act's effectiveness.

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14.3 The Equal Inheritance Principle and its Justification

The central principle of the proposed Act is the equal inheritance of male and female heirs. Sons and daughters shall inherit equally from their father. Sons and daughters shall inherit equally from their mother. Widows shall take absolutely and not as limited estate holders. These three propositions represent a root-and-branch reform of the existing law.

The justification for the equal inheritance principle operates at multiple levels. At the level of constitutional law, it is required by Articles 27 and 28 of the Bangladesh Constitution: equal protection of law and non-discrimination on grounds of sex. At the level of international human rights law, it is required by CEDAW and by the ICCPR and ICESCR obligations Bangladesh has undertaken. At the level of natural law theory, it is required by the basic goods of practical reasonableness and social justice that no legal system can coherently deny to any of its subjects. At the level of feminist jurisprudence, it is required by the commitment to substantive equality: formal legal equality that leaves untouched the structural disadvantages of women is insufficient; the law must be changed to address the material conditions that perpetuate women's subordination. At the level of development economics, it is required by the well-established empirical relationship between women's property rights and a range of positive outcomes, including economic growth, reduction of poverty, improvement in children's health and education, and reduction of gender-based violence.

There are those who oppose the equal inheritance principle on the ground that it violates the religious tradition of the Hindu community. This argument deserves a serious and respectful response rather than simple dismissal.

The serious response begins with the observation, made in Chapter Two of this treatise and now well supported by the Shishubar Dhali judgment, that the equal inheritance principle is not foreign to the Hindu tradition. The Manusmriti itself, in verse 9.130, declares the equality of son and daughter as regards succession. The Dayabhaga, as the Appellate Division has now confirmed, contains internal resources for an egalitarian interpretation. The tradition, in its full complexity, does not unanimously support the exclusion of daughters.

The response continues with the observation that law in a democratic state is not identical with religious tradition. India's experience demonstrates that a country with a much larger and politically more powerful Hindu population than Bangladesh has been able to reform Hindu personal law, including inheritance law, without destroying Hindu religious life or cultural identity. The Hindu Marriage Act of 1955 and the Hindu Succession Act of 1956 and its 2005 amendment have transformed the formal legal framework of Hindu personal law in India while the religion itself, its temples, its rituals, its festivals, its philosophical traditions, its cultural life, have flourished.

The response concludes with the argument that where religious tradition and constitutional equality are in tension, the constitution must prevail. Bangladesh is a constitutional democracy, not a theocracy. The fundamental rights of citizens cannot be subordinated to the requirements of religious tradition, however venerable that tradition is. This is not hostility to religion; it is the

elementary principle of constitutional supremacy that is essential to the rule of law in any democracy.

14.4 Addressing the Opposition: Conservative Arguments Examined

The reform of Hindu succession law in Bangladesh has faced organised opposition from certain Hindu community organisations and leaders. This opposition, represented most prominently by the Bangladesh National Hindu Grand Alliance and related bodies, has deployed several arguments against reform that deserve examination.

The first argument is that reform is premature because the social conditions in Bangladesh are not ready for it. Hindu women in Bangladesh, this argument goes, do not have the practical independence, economic sophistication, or social support to exercise absolute property rights effectively. Giving them such rights on paper will not improve their actual situation and may make things worse by creating conflicts within families that are not equipped to resolve them constructively.

This argument has a superficial plausibility but fails on several grounds. It is circular: the social conditions that make it difficult for women to exercise property rights are in significant part produced by the legal system that denies them those rights. Women lack economic independence partly because the law denies them inheritance rights; they lack social standing partly because the law defines them as less than full legal persons. Improving the legal framework is a precondition for improving the social conditions, not something that must wait until the social conditions have improved. Moreover, the argument proves too much: by the same logic, the denial of any rights to any oppressed group could be justified by the argument that the group is not yet ready to exercise them. This is the standard argument of all oppressors, and it has been rejected by constitutional courts and human rights bodies everywhere.

The second argument is that equal inheritance for daughters will make it impossible to find husbands for daughters who own property, because prospective grooms will demand higher dowries as compensation for the property the bride brings to the marriage. This argument reflects a real concern about the perverse incentive effects of legal reform in a context where dowry practices remain widespread. But it again proves too much: by the same logic, we could never reform any discriminatory law without first eliminating all the associated practices that exploit the discrimination. The appropriate response is to tackle dowry practices directly (through enforcement of the Dowry Prohibition Act and related measures) rather than to preserve the discrimination in the inheritance law as a strategy for limiting the collateral damage of dowry.

The third argument is that the reform agenda is driven by non-Hindu and anti-Hindu interests, including Muslim politicians and international organisations that are hostile to Hindu culture, and that the apparent advocacy for Hindu women's rights is actually a strategy for weakening the Hindu community by creating internal divisions. This is a conspiracy theory that deserves no serious jurisprudential engagement. The reform advocates include many prominent members of the Hindu community, including Hindu women lawyers and academics, and the reform proposals

themselves have been developed within a framework that explicitly seeks to preserve Hindu cultural identity while remedying gender injustice.

CHAPTER FIFTEEN: THE POLITICAL ECONOMY OF REFORM IN BANGLADESH'S CURRENT CONTEXT

15.1 The Post-July 2024 Political Context and Reform Opportunities

The political upheaval of July and August 2024, which removed the Awami League government and established an interim government under Professor Muhammad Yunus, has created a complex and in some respects paradoxical political context for the reform of Hindu personal law in Bangladesh.

On the one hand, the July 2024 revolution was animated by principles of equality, justice, and the reform of entrenched institutional arrangements that had become vehicles of corruption and oppression. The student movement that led the revolution explicitly invoked constitutional values and the aspiration for an equal and just society. These principles, if applied consistently, would seem to support the reform of personal laws that deny equal citizenship to the Hindu minority.

On the other hand, the post-revolution period has been marked by significant insecurity for the Hindu community, as documented in Chapter One of this treatise. The wave of violence against Hindu communities in August 2024, the continued incidents documented by the Bangladesh Hindu Buddhist Christian Unity Council through the remainder of 2024 and into 2025 and 2026, and the political environment in which Islamist forces have been more prominent than before: all of these factors create a context in which the Hindu community is on the defensive and in which advocacy for Hindu personal law reform risks being perceived as a provocation rather than as a step towards equal citizenship.

The interim government itself has been responsive to some reform demands, particularly in areas of institutional reform and constitutional revision. The Bangladesh Law Reform Commission has been active, and several areas of law are under review. But Hindu personal law has not been identified as a priority area for the current round of reforms, and the political sensitivity of the issue means that the government is unlikely to move proactively without sustained pressure from the Hindu community and its allies.

15.2 Civil Society and the Reform Coalition

The most important force for reform in this context is the coalition of civil society organisations that has been pressing for Hindu personal law reform for many years. This coalition includes the Bangladesh Legal Aid and Services Trust (BLAST), the Ain o Salish Kendra (ASK), Manusher Jonno Foundation, Bangladesh Mahila Parishad, and the Hindu Ain Pronoyoney Nagorik Udyog

(Citizens' Initiative to Enact Hindu Law), along with numerous individual lawyers, academics, and community activists.

The reform coalition has produced detailed legislative proposals, has engaged with the Law Commission, and has maintained public visibility for the reform issue through media engagement, legal clinics, and community outreach. The 2020 proposal of the Hindu Ain Pronoyoney Nagorik Udyog, which contains 17 sections addressing multiple aspects of Hindu personal law including inheritance, is the most detailed and comprehensive reform proposal currently in the public domain.

What the reform coalition has not yet been able to achieve is the political breakthrough needed to move reform legislation from proposal to enactment. The reasons for this are complex and include the fragmentation of Hindu community opinion on reform (with some organisations actively opposing it), the political calculations of successive governments about the costs and benefits of taking on this controversial issue, and the absence of a sustained mass mobilisation of Hindu women demanding their rights in the visible and public way that reform advocates have called for.

15.3 The Role of the Courts in the Reform Period

Given the limitations of the legislative route in the current political context, the role of the courts in advancing the reform agenda becomes particularly important. The Shishubar Dhali judgment of 2023 demonstrates that the Bangladesh courts are capable of progressive, constitutionally grounded judicial development of Hindu personal law. The challenge is to build on this precedent through systematic litigation that addresses the full range of discriminatory features of the existing law.

A strategic litigation programme for Hindu succession law reform in Bangladesh would focus on the following issues, in order of priority:

First, the abolition of the widow's limited estate through constitutional challenge. A test case could be brought on behalf of a widow who has inherited her husband's property as a limited estate and seeks a declaration that she holds it absolutely, on the ground that the limited estate doctrine violates Articles 27 and 28 of the Constitution. This case would seek to extend the constitutional harmonisation approach of Shishubar Dhali from the Stridhana context to the broader law of succession.

Second, the equal inheritance rights of daughters in their father's estate. A test case could be brought on behalf of a daughter who has been excluded from her father's estate by the presence of a son, seeking a declaration that the exclusion violates the constitutional equality guarantee. This would be the most transformative single judicial decision possible in this area of law.

Third, the right of female family members to demand partition. A test case establishing that a widow or daughter can demand partition of joint family property, and that the Karta cannot be confined to male members, would have immediate and significant practical benefits.

Each of these cases would need to be carefully selected, thoroughly prepared, and pursued by lawyers with expertise in both constitutional law and Hindu personal law. The Bangladesh Legal Aid and Services Trust and Ain o Salish Kendra are the organisations best positioned to develop such a litigation programme.

15.4 Legal Education, Judicial Training, and Public Awareness

The reform of the law on paper, whether through legislation or judicial decisions, is necessary but not sufficient. The lived experience of Hindu women in Bangladesh is shaped not only by the formal law but by the knowledge, attitudes, and practices of lawyers, judges, police, court officials, and the community members themselves. A comprehensive reform strategy must therefore include significant investment in legal education, judicial training, and public awareness.

Legal education in Bangladesh does not currently provide an adequate grounding in Hindu personal law. Law school curricula in Bangladesh give Hindu personal law minimal attention, with the result that many lawyers who encounter Hindu property disputes lack the basic knowledge needed to advise their clients effectively. The reform of legal education to include comprehensive coverage of Hindu personal law, including its colonial history, its current rules, and the reform proposals, is an essential step towards making any legislative reform effective in practice.

Judicial training is equally important. Judges who have not received specialised training in Hindu personal law are likely to apply it inconsistently, to default to familiar but inapplicable common law principles, or simply to misunderstand the applicable rules. The Bangladesh Judicial Administration Training Institute should develop a comprehensive training module on Hindu personal law, covering the Dayabhaga rules, the statutory modifications, the constitutional dimensions, and the reform proposals, and should make this training mandatory for all judges in the family courts and civil courts where Hindu personal law matters are commonly litigated.

Public awareness campaigns, targeting Hindu communities across Bangladesh and particularly in rural areas where the gap between formal law and lived practice is greatest, are needed to inform community members of their existing rights under the current law and of the reform proposals. Such campaigns should be conducted in both Bengali and in the dialects spoken by specific regional communities, should use accessible formats including radio, community theatre, and visual materials as well as written publications, and should be designed with the direct involvement of Hindu women from the communities they target.

CONCLUSION TO PART THREE

The Property of Half the People

Part Three of this treatise has traversed a vast terrain: the philosophical foundations of Dayabhaga jurisprudence, the specific rules governing the widow's limited estate and the daughter's exclusion, the Stridhana property regime and its precarious protections, the colonial statutes that partially modified but did not transform the system, the constitutional framework that ought to require but has not yet produced comprehensive reform, the comparative experience of India and Nepal, the landmark judicial activism of the Shishubar Dhali judgment, and the detailed structure of a proposed Hindu Succession Act for Bangladesh.

The argument that runs through all of this analysis is a single, clear, and urgent argument: the Hindu law of succession in Bangladesh denies property rights to women, and this denial is unjust, unconstitutional, and contrary to Bangladesh's international obligations. It is unjust by the standards of the Dayabhaga tradition itself, which, properly read and freed from its colonial distortions, does not require the degree of female exclusion that has been attributed to it. It is unconstitutional under Articles 27 and 28 of the Bangladesh Constitution. It is contrary to CEDAW, the ICCPR, the ICESCR, and the SDG commitments Bangladesh has undertaken.

The widow in Bangladesh who inherits her husband's property and finds herself in the position of a temporary custodian, dependent on the goodwill of her sons and subject to their challenge of her every management decision, is not living under a system of law appropriate to a citizen of a democratic republic. She is living under the residue of a colonial and pre-colonial arrangement that was designed for a different society, in a different era, on different assumptions about the nature and status of women. The same is true of the daughter who watches her brothers inherit their father's property absolutely while she inherits nothing, or inherits a limited estate that will revert to the male line when she dies.

The property of half the people, the property that Hindu women in Bangladesh inherit, hold, manage, and seek to transmit to their own children, deserves the same legal protection as the property of the other half. Not a lesser protection. Not a conditional protection. Not a protection that comes only in the absence of male relatives. The same protection, full ownership, full testamentary power, full capacity to enforce one's rights in court, full status as a legal person with respect to the things one holds.

This is not a radical demand. It is the demand for what India's Hindu Succession Act of 1956 and its 2005 amendment gave to Hindu women in India more than sixty years ago. It is what Nepal's National Civil Code of 2017 gave to Hindu women in Nepal. It is what the Constitution of Bangladesh, on any honest reading, already requires. It is time for Bangladesh to give it.

BIBLIOGRAPHY AND FURTHER READING FOR PART THREE

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systems. Gooroodass Banerjee's The Hindu Law of Marriage and Stridhan (Tagore Law Lectures, 1878, reprinted 1962) provides the foundational scholarly analysis of Stridhana within the Dayabhaga framework. Werner Menski's Hindu Law: Beyond Tradition and Modernity (Oxford University Press, 2003) provides the most comprehensive jurisprudential analysis of Hindu law from a contemporary perspective.

On the Hindu Women's Rights to Property Act of 1937, Paras Diwan's Modern Hindu Law (Allahabad Law Agency, 21st edition, 2012) provides the best commentary within the Indian context. The law as applied in Bangladesh is discussed in Bipasha Rani Paul's article in Eurasia Review of January 2025, and in the detailed analysis on the Law Help BD website (lawhelpbd.com) updated through 2025.

On the Shishubar Dhali judgment of 2023, the analysis by Mokarramus Shaklan published in Lawyers Club Bangladesh in March 2025 provides the most accessible and comprehensive commentary on the judgment's significance. The judgment itself is reported at 18 SCOB 2023 AD 20 and available through the Bangladesh Supreme Court's online case database.

On Indian succession law and the Vineeta Sharma judgment, the judgment itself is reported at (2020) 9 SCC 1 and available through Indian legal databases including SCC Online. The analysis in The Legal Quorum (February 2026) and in SCC Online blog (February 2026) provides the most recent commentary on the judgment and its implications. The interview with Dr. Saumya Uma published in The Wire (August 2020) provides an important feminist jurisprudential assessment. The analysis in Nyaay Shastra (November 2025) titled "Coparcenary Rewritten: Gender, Justice and the Constitution" situates Vineeta Sharma within the broader constitutional jurisprudence of gender equality.

On the international human rights framework, the texts of CEDAW, the ICCPR, and the ICESCR are available from the Office of the United Nations High Commissioner for Human Rights. The CEDAW Committee's General Recommendations, particularly General Recommendation No. 21 (on equality in marriage and family relations) and General Recommendation No. 34 (on the rights of rural women), provide detailed guidance on the application of CEDAW to personal law systems including those governing inheritance. Bangladesh's UPR documents, available from the Human Rights Council website, provide the record of international recommendations regarding minority personal laws.

On the comparative framework, Nepal's National Civil Code of 2017 is available in official English translation from the Nepal Law Commission. The Indian Hindu Succession Act of 1956 and its 2005 amendment are available from the Ministry of Law and Justice website of India. The reform proposals of the Hindu Ain Pronoyoney Nagorik Udyog (2020) are available through the organisations in the reform coalition, including BLAST and ASK.

On the social and economic consequences of the denial of inheritance rights to Hindu women, the report by the Bangladesh Hindu Buddhist Christian Unity Council documenting violence against Hindus in August 2024 is available from that body. (Human Rights Watch) reports on the situation of religious minorities in Bangladesh (2024, 2025) and USCIRF annual reports (2024,

2025) provide the international human rights documentation. The academic literature on women's property rights and their social consequences is summarised in the International Journal of Research and Innovation in Social Science article titled "Inherited Inequality: The Limited Rights of Hindu Women over Property" published in June 2025.

On the reform advocacy, publications by BLAST (Bangladesh Legal Aid and Services Trust), Ain o Salish Kendra, Manusher Jonno Foundation, and Bangladesh Mahila Parishad document the civil society dimension of the reform effort and provide the most current information on the state of advocacy as of 2025 and 2026.

The Fourth Part of this treatise will examine the Hindu law of adoption in Bangladesh: the ancient rules of the Dayabhaga school, the conditions and ceremonies for a valid adoption, the legal consequences of adoption, the rights of the adopted child and the adoptive parents, the restrictions on adoption by and of women, the current law's inadequacies in the light of evolving family structures and the rights of children, and the comparative framework provided by India's Hindu Adoptions and Maintenance Act of 1956, with a comprehensive proposal for a Hindu Adoption Act for Bangladesh.

PART FOUR

The Architecture of Parenthood and Provision: Hindu Adoption Law, the Dattaka System, Maintenance Rights, and the Comprehensive Reform of Family Law for Hindu Bangladesh

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PREFATORY NOTE TO PART FOUR

If Part Three of this treatise examined the architecture of inherited injustice as it operates through the rules of succession, Part Four descends into two further chambers of that same architecture, chambers whose walls are equally old and equally in need of demolition and reconstruction. The first chamber is adoption law. The second is maintenance law. Together, they govern some of the most intimate and consequential dimensions of Hindu family life in Bangladesh: how families are formed and extended through the act of taking a child as one's own, and how the most economically vulnerable members of those families, wives, widows, parents, and dependent children, are provided for when their natural supporters fail them or die.

The adoption law of Hindu Bangladesh is, in many respects, the most philosophically revealing area of the entire Hindu personal law system. It is where the theological commitments of the Dayabhaga school, the belief in the spiritual function of the son, the necessity of the pinda offering, the cosmological importance of the male heir, are most nakedly exposed in their consequences. A system that recognises adoption only of sons, and only by men, and only for the

purpose of securing a male heir to perform religious rites, is a system that has never pretended to be about the welfare of children. It is a system that treats children as instruments of adult religious and secular purposes rather than as persons in their own right with interests that law must protect.

The maintenance law of Hindu Bangladesh is, for its part, the area in which the dependency of women is most explicitly codified and most practically consequential. The rules governing who is entitled to maintenance, from whom, on what conditions, and before what courts, determine whether a wife separated from her husband can survive economically, whether a widow whose husband left no estate has any enforceable claim against her in-laws, whether an aged parent can compel the children who have inherited their home to provide for their daily needs. These are not abstract legal questions; they are questions about survival.

Both adoption law and maintenance law in Bangladesh remain governed, in their essentials, by pre-colonial and colonial-era rules that have not been systematically reformed since independence. The Indian experience of comprehensive reform through the Hindu Adoptions and Maintenance Act of 1956 provides the most directly relevant comparative model, and the contrast between the Indian legal framework and the Bangladeshi one is, as in the domains of marriage and inheritance examined in Parts Two and Three, a contrast of the starkest kind.

This Part proceeds through fifteen chapters. It examines the philosophical and theological foundations of adoption in Hindu thought, the specific rules of the Dattaka system as applied under the Dayabhaga school, the conditions for a valid adoption and the elaborate ceremonies that must accompany it, the legal consequences of adoption for the adopted child and the natural family, the restrictions on adoption by and of women, the treatment of orphaned children and the gap in the law that leaves them without adequate protection, the maintenance entitlements of wives, widows, children, and parents, the specific statutory framework of the Hindu Married Women's Right to Separate Residence and Maintenance Act of 1946, the judicial interpretation of maintenance obligations, the constitutional and international human rights dimensions of both adoption and maintenance law, and a comprehensive legislative proposal for a Hindu Adoptions and Maintenance Act for Bangladesh.

CHAPTER ONE: ADOPTION IN HINDU THOUGHT: THE PHILOSOPHICAL AND THEOLOGICAL FOUNDATIONS

1.1 Why Adoption in Hindu Law is Different from Adoption Elsewhere

To understand what is wrong with the Hindu adoption law currently operative in Bangladesh, and what a reformed law should look like, it is necessary first to understand what adoption means within the theological and philosophical framework of the Dayabhaga school. Adoption in Hindu law is not what it is in modern secular law. In modern secular law, adoption is primarily understood as an institution for child welfare: it provides children who cannot be cared for by

their natural parents with the security of a permanent family, and it provides childless adults with the joy and responsibility of parenthood. The child's welfare is the paramount consideration.

In the classical Hindu law of adoption, adoption is primarily understood as an institution for religious continuity. It provides a man who has no natural son with a substitute son who can perform the rituals of the Shraddha ceremony, offer pinda to the adoptive father's spirit after death, and thereby secure the father's spiritual welfare and liberation from the cycle of rebirth. The classical texts are explicit on this point: the entire justification for adoption in Hindu law is the religious and spiritual function of the son. The Manusmriti states that a man should, by careful means, beget a son, because through a son one wins the worlds. Through a grandson one attains immortality. Through a son's grandson one reaches the heaven of the sun. The son who performs the Shraddha rites is the foundation of the father's spiritual survival.

This theological foundation has several immediate and profound consequences for the shape of the adoption law. First, since the purpose of adoption is to provide a religious son, only boys can be adopted. Adoption of a girl serves no purpose within this theological framework because a girl cannot be the performer of Shraddha rites for her adoptive father. Second, since the purpose is to provide a son for a specific family's religious continuity, the adoptive father must be a man, or a woman acting with her husband's prior authorisation, because only a man can have the religious need that adoption supplies. Third, since the son's function is specifically religious and connected to the family's ancestral line, the adopted son must belong to the same caste as the adoptive father, because only a person of the same caste can perform the necessary rites efficaciously. Fourth, since the son is being taken to perform rites for the deceased father, the act of adoption requires elaborate ceremonial performance, particularly the Dattahomam or Dattahoma, the oblation to the sacred fire, which is understood as the ritual completion of the transfer of the child from one family to another.

All of these consequences of the theological foundation are built into the classical rules of adoption law, and all of them survive, in greater or lesser degree, in the adoption law currently applicable to Hindus in Bangladesh. The theological premises of the classical system have not been reformed away as they have been in India; they continue to shape and constrain the practical law of adoption in ways that produce serious injustice.

1.2 The Concept of Dattaka: Adoptive Filiation in the Dayabhaga School

The word Dattaka, which means literally given, is the central concept of Hindu adoption law in the Dayabhaga school. The Dattaka form of adoption, which is the form recognised and practised in Bengal and hence in Bangladesh, involves the formal giving of a son by his natural father (or natural mother) to an adoptive father, accompanied by the prescribed ceremonies and with the intention of completely transferring the child from his natural family to the adoptive family.

The Dattaka Mimansa, a treatise by Nanda Pandit, and the Dattaka Chandrika, another treatise of uncertain authorship, are the two principal classical authorities on the Dattaka form of adoption that were given particular weight by the colonial courts in Bengal. These texts, read and applied

by the colonial courts, established the rules of adoption that continue to govern Hindu Bangladeshis today.

The Dattaka Mimansa is a deeply conservative text that imposed strict conditions on the validity of adoption. Its most notable restriction is the rule that adoption must be within the same caste, and specifically the rule that there should be no adoption across the boundaries of the four Varnas, the major caste categories of Brahmin, Kshatriya, Vaishya, and Shudra. Within the same Varna, adoption between different sub-castes was generally permitted, though the Dattaka Mimansa expressed reservations even about this in some circumstances.

The colonial courts, working from the Dattaka Mimansa and the Dattaka Chandrika, developed a body of case law on adoption that has become the applicable law in Bangladesh. This case law is complex, internally somewhat inconsistent, and far less accessible to ordinary litigants than a clear statutory code would be. The reform case is therefore partly about substantive change, removing discriminatory rules, and partly about procedural clarity, replacing a complex body of case law with a clear and accessible statutory framework.

1.3 The Transplantation Theory and Its Consequences

The classical Hindu theory of adoption in the Dattaka form is sometimes described as the transplantation theory: the adopted child is understood as being completely uprooted from his natural family and replanted in the adoptive family, as if he had been born into the adoptive family rather than the natural one. This metaphor of transplantation has considerable legal significance.

The transplantation theory means that on adoption, the adopted son's connection to his natural family is, in principle, completely severed for all purposes except certain residual prohibitions. He loses his rights of inheritance in his natural family. He acquires the rights of inheritance in his adoptive family as if he were a natural son. He takes on the gotra (patrilineal clan designation) of his adoptive father. He acquires the capacity to perform the religious rites that are the purpose of his adoption.

The residual connections that survive adoption are also significant. The adopted son continues to be prohibited from marrying persons who would have been within his prohibited degrees of relationship in his natural family: this is the rule that prevents the adoption from being used to arrange marriages between close relatives by the device of temporarily reclassifying the relationship. And the natural family connection continues for the purposes of the caste system: the adopted son does not change his caste by adoption.

The transplantation theory has been applied by the courts in Bangladesh in a relatively rigid manner, though with some modifications around the edges. The principle that adoption creates a complete new familial identity for the adopted child, for all purposes of personal law, remains central to the legal framework.

One important question that arises from the transplantation theory is whether an adopted child has any residual entitlements against his natural parents, particularly in relation to maintenance. The classical rule is that the natural parents are relieved of their duty of maintenance on adoption, which passes to the adoptive parents. But this rule operates harshly in situations where the adoption proves unsuccessful or where the adoptive parents are unable or unwilling to provide adequate maintenance. The reform of adoption law must address this gap.

1.4 Adoption as a Religious Act vs. Adoption as a Welfare Instrument

The tension between the classical understanding of adoption as a primarily religious act and the modern understanding of adoption as a primarily welfare institution is the central intellectual tension of Hindu adoption law reform. It is a tension that runs through the reform debates in India, in Nepal, and now in Bangladesh, and resolving it requires a philosophically sophisticated approach that neither dismisses the religious tradition nor allows it to perpetuate injustice.

The Indian Hindu Adoptions and Maintenance Act of 1956 resolved this tension by what might be called a pragmatic secularisation: it removed the requirement of religious ceremony as a condition of validity, allowed both men and women to adopt, allowed the adoption of girls as well as boys, abolished the caste restriction on adoption, and generally reoriented the institution of adoption from a religious towards a welfare framework, while retaining the basic structure of the Dattaka form of adoption and the concept of complete transfer from natural to adoptive family.

This solution was contested at the time. Conservative Hindu opinion argued that by removing the religious requirements, the 1956 Act had destroyed the essential character of Hindu adoption. More progressive opinion welcomed the reform as bringing the law into line with constitutional values and with the actual welfare needs of children.

The jurisprudential evaluation of the 1956 solution is illuminating. From the perspective of Ronald Dworkin's theory of law as integrity, the 1956 Act can be defended as achieving a principled coherence between the inherited legal institution and the constitutional values the state has committed to. The institution of adoption is preserved, but its organizing principle is transformed from religious exclusivity to child welfare and family formation. This is not the abandonment of the tradition but its principled renovation.

From the perspective of communitarian theories of law associated with Alasdair MacIntyre and Charles Taylor, the 1956 Act might be criticised as imposing an individualistic, rights-based framework on an institution that is properly understood as embedded in a specific communal tradition and that loses something important when severed from its religious grounding. But this criticism applies with diminishing force when the communal tradition in question perpetuates clear injustices: the exclusion of girls from adoption, the exclusion of women from the right to adopt, and the denial of legal family status to orphaned children who need it most.

From the perspective of feminist jurisprudence, the 1956 Act's extension of the right to adopt to women and the permission to adopt girls are essential reforms. They transform adoption from an

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institution that serves the interests of adult men by supplying them with a ritual successor into an institution that serves the interests of children and adults of all genders in forming genuine family relationships.

CHAPTER TWO: THE CONDITIONS FOR A VALID ADOPTION UNDER THE DAYABHAGA SCHOOL

2.1 Who May Adopt: The Rules Governing the Adoptive Parent

Under the classical Dayabhaga rules as applied in Bangladesh, the capacity to adopt is severely restricted. The basic rule is that only a man can be an adoptive parent in the primary sense: adoption is an institution for men, created to solve a male religious problem, and a woman's role in adoption is either as the giver of a son or as the instrument of her husband's adoption authority.

More specifically, the rules governing the capacity of a Hindu man to adopt under the Dayabhaga school as applied in Bangladesh are as follows. A man who has no son, grandson (son's son), or great-grandson, whether natural or adopted, is entitled to adopt. The absence of a male heir in the direct line is the precondition for the right to adopt. A man who already has a son, natural or adopted, cannot adopt another son: this rule, derived directly from the spiritual purpose of adoption (one son is sufficient to perform the required rites), means that adoption can never be used simply to increase the size of one's family or to provide for the welfare of a child who needs a home.

The man who seeks to adopt must himself be a Hindu, must be capable of giving a valid consent, must be of sound mind, and must not have taken renunciation of worldly life (Sanyasa), since a man who has renounced the world has also renounced the familial relationships and obligations that adoption creates.

A married man may adopt without his wife's consent under the classical rules, though the wife's consent was regarded as desirable. This rule reflected the patriarchal character of the classical system: adoption was a male prerogative, and the wife's role was essentially passive. The colonial courts sometimes required the wife's consent as a condition of validity, particularly in cases where the wife appeared to have been excluded from the decision to adopt in circumstances suggesting bad faith, but the strict classical rule did not require it.

2.2 The Widow's Right to Adopt

The position of a widow in relation to adoption is one of the most practically significant and most contentious aspects of Hindu adoption law in Bangladesh. The classical rule, derived from the Dattaka Mimansa, was that a widow could not adopt without her husband's prior authorisation. The theoretical basis of this rule is that adoption is a religious act of the husband,

undertaken to secure his spiritual welfare; the husband is the relevant religious person, and the widow can act in his place only if he has delegated the authority to her before his death.

This rule was articulated in the text of the Dattaka Mimansa in terms that gave it apparent authority: the widow, it was said, could adopt only if her husband had expressly authorised her to do so, whether by express oral statement, by implication from his conduct, or by inference from custom. The absence of such authorisation meant that the widow had no right to adopt, however great the need.

The colonial courts in Bengal applied this rule in a manner that was somewhat ambiguous. Some decisions held that the husband's authorisation could be inferred from the general custom of the community or from the circumstances of the family, without requiring an express authorisation. Other decisions held more strictly that an express prior authorisation was necessary. This inconsistency in the case law created significant uncertainty that has been passed on to the courts of Bangladesh and has never been resolved by legislation.

The practical consequence of this rule is that a Hindu widow in Bangladesh who has no son, whether because she was childless or because her sons have died or because she was separated from her husband before children were born, may be unable to adopt a son to provide for her maintenance and her religious observances in old age. This incapacity falls most heavily on the most vulnerable: widows who were young when their husbands died, who have spent their lives without children, and who have no male heir to support them in old age. The reform of this rule is therefore both a matter of gender justice and a matter of basic social welfare.

2.3 The Rule Against Adoption of Girls

The prohibition on the adoption of girls under the classical Hindu law is one of the most nakedly discriminatory features of the system. The rule is simple: only boys can be adopted. A girl cannot be given in adoption, and a girl cannot be taken in adoption. This rule is a direct and unavoidable consequence of the theological purpose of adoption: since adoption exists to provide a son who can perform Shraddha rites, and since girls are not performers of those rites, girls cannot be adopted.

The practical consequences of this prohibition are severe for girls who need the protection that legal adoption provides. In the system as it currently stands in Bangladesh, a childless couple who wishes to provide a loving home for a girl in need cannot do so through the institution of Hindu adoption. A Hindu family that has daughters but no sons cannot adopt a daughter to prevent the extinction of the family line (since the family line, in this theological framework, continues through sons). A childless widow who wishes to adopt a girl to be cared for in old age cannot do so.

The situation of children who might benefit from adoption in Bangladesh is particularly acute because the country has no comprehensive law on the secular adoption of non-Muslim children. The Children Act of 2013 provides a general framework for child welfare but does not create an institution of secular adoption. The Guardians and Wards Act of 1890 provides for legal

guardianship, but guardianship is not the same as adoption: a ward has no inheritance rights against the guardian, the relationship is not permanent, and it does not create the full parental relationship that adoption represents.

The reform of Hindu adoption law to allow the adoption of girls is therefore not merely a matter of gender equality within the Hindu community; it has broader implications for the welfare of children in Bangladesh who need the protection that legal family membership provides.

2.4 Caste Restrictions on Adoption

The classical rule that adoption must be within the same caste is another dimension of the adoption law that demands reform. The caste restriction on adoption reflects the theological view that the spiritual efficacy of the adopted son's religious rites depends on his caste identity: a son who belongs to a different caste from his adoptive father cannot perform the rites that justify his adoption.

In the contemporary context of Bangladesh, the caste restriction on adoption has two kinds of practical consequences. First, it means that a Hindu family wishing to adopt may face serious obstacles if there is no suitable child of the same caste available for adoption. This is particularly problematic in communities where a specific sub-caste is small and geographically dispersed. Second, it means that the courts must make what are frequently difficult and contested determinations about the caste identity of both the adopting family and the child to be adopted, in circumstances where caste identity may itself be unclear or disputed.

The case law on caste and adoption in Bangladesh reflects the courts' recognition of these practical difficulties. Decisions from the Supreme Court of Bangladesh, including a judgment reported in 31 DLR (AD) 1979 (the Anath Bandhu Guha case), have shown that the courts are willing to interpret the caste restriction with some flexibility, recognising for instance that adoption between different sub-castes within the same broad Varna category is valid. But this flexibility has not resolved the fundamental problem: a rule that conditions the validity of adoption on the caste identity of the parties is incompatible with the constitutional prohibition on discrimination on grounds of religion, race, caste, sex, or place of birth.

2.5 The Ceremony of Dattahoma and the Problem of Formality

The requirement that a valid adoption under Hindu law must be accompanied by the Dattahoma ceremony, the oblation to the sacred fire, is one of the most practically significant of all the conditions for adoption in Bangladesh. The Dattahoma is a Vedic ritual in which the giving and receiving of the child is formalised before the sacred fire as witness, with specified mantras recited and specified oblations made. It is understood in the classical tradition as the moment at which the adoption is spiritually and legally complete.

The requirement of the Dattahoma ceremony creates serious practical difficulties for poor Hindu families in rural Bangladesh. The ceremony requires the presence of a learned priest who can perform the prescribed Vedic rituals, the availability of the necessary materials for the fire

oblation, and a gathering of family members and community witnesses to attest the adoption. In rural areas, particularly in the aftermath of the communal disruptions that have periodically affected Hindu communities in Bangladesh, these requirements may be difficult to satisfy.

The colonial courts developed a doctrine of partial relaxation of the Dattahoma requirement: an adoption that was otherwise valid, in which the giving and taking ceremony had been performed with the intention of transfer, could be valid even if the Dattahoma had not been performed, particularly if the failure to perform it was due to circumstances beyond the parties' control. But this relaxation was not consistent across all decisions, and the uncertainty about whether an adoption without Dattahoma is valid creates serious practical problems for families who have completed the giving and taking ceremony but have not performed the formal Vedic oblation.

The 2025 Indian court judgment in Nivritti Pandurang Nale versus Uttam Ganu Nale, decided by the Bombay High Court and noted in the recent legal commentary on LAWBAAZI (December 2025), reasserted the position that evidence of the actual giving and taking ceremony is necessary for a valid adoption, and that mere registration of an adoption deed is insufficient without evidence that the ceremony was performed. This principle applies with even greater force in Bangladesh, where there is no systematic registration of adoptions and where the evidential question of whether a valid adoption was completed is frequently critical in litigation.

CHAPTER THREE: THE LEGAL CONSEQUENCES OF ADOPTION UNDER DAYABHAGA LAW

3.1 The Rights and Status of the Adopted Son

The legal consequences of a valid adoption under the Dayabhaga school are, in principle, comprehensive and permanent. The adopted son stands in the same legal position as a natural son for all purposes of Hindu personal law. He inherits from his adoptive father as if he were a natural son. He performs the Shraddha rites for his adoptive father. He is a member of his adoptive father's joint family. He takes the gotra (clan designation) of his adoptive father.

The principle of the complete equality of the adopted son with the natural son is well established in the case law of Bangladesh. The Anath Bandhu Guha case, decided by the Appellate Division of the Supreme Court in 1979, affirmed that Hindu law does not make a distinction between a natural son and an adopted son in the matter of inheritance, and that whether it is in the application of personal law or secular law, the adopted son has the same status as the natural son.

This principle of equality has important practical implications in the inheritance context examined in Part Three. If a Hindu man adopts a son and subsequently dies intestate, the adopted son takes the inheritance in exactly the same manner as a natural son would. If there are both natural sons and an adopted son, they share equally. And the adopted son's right cannot be defeated by the claim of natural descendants unless the adoption is successfully challenged as invalid.

But the principle of equality also has a less benign dimension. Because the adopted son is treated as a natural son, his adoption is irrevocable: once a valid adoption has been completed, it cannot be undone. The adopted child cannot be returned to his natural family, and the adoptive parents cannot renounce their parental responsibility. This irrevocability means that the consequences of an adoption are permanent and far-reaching, which makes the conditions for a valid adoption correspondingly important.

3.2 The Severing of Natural Family Ties: Theoretical Completeness vs. Practical Reality

The transplantation theory, discussed in Chapter One, holds that adoption completely severs the adopted son's ties to his natural family. In theory, he has no inheritance rights in his natural family after adoption, no obligation of maintenance towards his natural parents, and no continuing familial relationship with his natural brothers and sisters.

In practice, the complete severance of natural family ties that the transplantation theory requires rarely corresponds to social reality. The adopted child typically continues to know his natural parents, may continue to have relationships with his natural siblings, and may in many cases continue to live in close proximity to his natural family in the same village or neighbourhood. The legal fiction of complete severance sits awkwardly with these continuing human relationships, and courts in Bangladesh and India have grappled with the tension between legal principle and social reality in a number of cases.

The most significant practical tension arises in relation to maintenance. If the transplantation is complete, the adopted son owes no duty of maintenance to his natural parents; that duty falls on the natural son who remains in the natural family. But if the natural parents had no other son (a common reason for giving a child in adoption is precisely the desire of a family with multiple sons to help a family with none), the natural parents may be left without any person legally obliged to maintain them. This is an injustice that the reform of adoption law must address, either by providing explicitly that some residual obligation of maintenance towards natural parents survives adoption, or by ensuring that the adoption process includes appropriate provision for the natural parents' welfare.

3.3 The Position of the Adopted Son's Natural Siblings

The treatment of the adopted son's natural siblings under the transplantation theory creates further complexities. Under the theory, the adopted son's relationship with his natural siblings is, after adoption, that of strangers rather than brothers. He has no inheritance right in his natural family, and they have no inheritance right in his adoptive family.

This theoretical position is again at odds with social reality and with ordinary human experience. The courts have sometimes softened the rigour of the transplantation theory in cases concerning natural siblings, particularly in situations where the close proximity of the natural and adoptive families makes the fiction of complete separation impossible to maintain.

The reform of adoption law in Bangladesh should address this question directly. A modern Hindu Adoption Act should provide clarity on the residual relationships that survive adoption, following the model of the Indian Hindu Adoptions and Maintenance Act of 1956, which provides specifically that the adopted child shall not divest any person of any estate which vested in that person before the adoption, and that nothing in the Act shall prevent a Hindu parent from making gifts to his natural child by deed or will.

CHAPTER FOUR: THE RESTRICTION ON WOMEN ADOPTING AND ITS CONSTITUTIONAL IMPLICATIONS

4.1 The Doctrinal Position and Its Internal Tensions

The restriction on women's capacity to adopt is one of the most revealing aspects of Hindu adoption law in Bangladesh. Under the classical rules as applied in Bangladesh, a woman does not have an independent right to adopt. She can participate in an adoption only as the instrument of her husband's adoption authority, and she can exercise even that instrumental role only if her husband has prior authorised her to do so.

This restriction is in profound tension with the position that the same law accords to women in other contexts. A Hindu woman in Bangladesh can hold property, can enter contracts, can sue and be sued in her own name, and in certain circumstances can demand maintenance from her husband or his family. The restriction on her capacity to adopt is not a general incapacity but a specific disability in one particular domain, a disability that reflects not the law's general conception of women's legal capacity but specifically the theological framework of adoption as a male-oriented religious institution.

The internal tensions within this position have been the source of considerable doctrinal difficulty. If a Hindu widow wishes to adopt and her deceased husband left no express authorisation, can she adopt? The courts in Bengal and Bangladesh have answered this question inconsistently over the decades. Some decisions have held that the husband's authorisation can be inferred from his general disposition or from community custom. Others have held more strictly that without express prior authorisation, the widow cannot adopt.

The BLAST publication on legislative initiatives and reforms in family law states directly and clearly: according to Hindu law, only men have the right to take a male child in adoption; Hindu women have no right to adopt. This is the practical reality as understood by practitioners and reformers in Bangladesh, whatever the doctrinal nuances of the case law on the widow's situation.

4.2 The Constitutional Challenge to the Restriction on Women Adopting

The constitutional challenge to the restriction on women's capacity to adopt is more straightforward than the challenge to some other aspects of Hindu personal law, because the

restriction is based purely on gender with no plausible alternative justification once the theological premise is removed. If the theological argument is that adoption serves the religious function of providing a son to perform Shraddha rites, and if women cannot have that religious need (because in the traditional theology only men require Shraddha for their spiritual welfare), then removing women from the capacity to adopt follows with iron logic from the theological premise. But the theological premise is precisely what the constitutional framework does not allow to determine civil legal rights.

Articles 27 and 28 of the Constitution of Bangladesh guarantee equality before the law and prohibit discrimination on grounds of sex. The denial of the right to adopt to a Hindu woman while granting it to a Hindu man is a clear example of discrimination on grounds of sex, and the theological justification for this discrimination is not a "reason" in the constitutional sense but precisely the kind of religiously-grounded gender differentiation that the constitutional equality guarantees are designed to prevent.

The counter-argument, that this discrimination is justified by the religious character of the institution of adoption in Hindu law and is therefore protected by the freedom of religion provisions of the Constitution, faces the same objections that have been addressed in other parts of this treatise. Religious freedom is the freedom to practise one's religion; it is not a licence to deny civil legal rights to citizens on the basis of their gender or their failure to fulfil religious requirements. A system that denies a woman the right to adopt, backed by state law and enforced by state courts, is not simply a religious practice; it is a state imposition of gender discrimination.

The Shishubar Dhali judgment of 2023, though not directly concerned with adoption, provides an important precedent for the constitutional challenge to the restriction on women adopting. The Appellate Division's approach in that case, reading the constitutional equality provisions as applicable to Hindu personal law and requiring the personal law to be interpreted consistently with those provisions, is directly applicable to the adoption context. A court following the Shishubar Dhali approach would be obliged to read the restriction on women adopting as unconstitutionally discriminatory and to hold either that the restriction is invalid or that it must be interpreted so as not to apply to women who seek to adopt independently of any male authorisation.

4.3 The Unmarried Woman and Adoption

The position of an unmarried Hindu woman in relation to adoption is even more restricted than that of a widow. Under the classical rules, an unmarried woman cannot adopt at all: there is no husband whose religious need she might be serving, and the entire framework of adoption presupposes the marital relationship as the context within which the religious purpose of adoption arises. An unmarried woman who wishes to provide a permanent home for a child in need has no mechanism under Hindu adoption law through which to do so.

This restriction is particularly unjust in the contemporary context, where an increasing number of Hindu women in Bangladesh live outside traditional marital structures, whether through choice, through the dissolution of their marriages (a legal impossibility under current Hindu law, as Part

Two of this treatise discussed, but a social reality), or through widowhood in circumstances where remarriage is not pursued. These women, who may be entirely capable of providing a loving and stable home for a child, are completely excluded from the institution of adoption by a rule that has nothing to do with their fitness as parents and everything to do with a theological framework that has no place for them.

The reform of the adoption law to allow single women, unmarried women, and widows to adopt independently, without requiring any male authorisation, is therefore a matter of both gender equality and child welfare. India's Hindu Adoptions and Maintenance Act of 1956 allows a female Hindu to adopt if she is of sound mind, is not a minor, and is either unmarried, or a widow, or is a divorcee. Bangladesh needs a provision of exactly this kind.

CHAPTER FIVE: THE PROHIBITION ON ADOPTING ORPHANS AND ITS CONSEQUENCES

5.1 The Classical Rule and Its Theological Basis

The rule that orphans cannot be adopted under Hindu law is one of the most consequential and least frequently discussed restrictions in the entire adoption law of Bangladesh. The reason for this restriction flows directly from the theological framework: adoption requires a giving and taking ceremony in which both the natural parents and the adoptive parents participate. If the child has no natural parents (because they are dead), there is no one to perform the giving part of the ceremony; the act of giving cannot be completed; the adoption is therefore impossible.

This rule is not a peripheral technicality. In Bangladesh, where poverty, disaster, disease, and communal violence have produced significant numbers of orphaned children within the Hindu community, the inability to adopt orphans under the applicable Hindu law means that these children cannot acquire the legal status of family members with full inheritance rights and maintenance claims. They can, at best, be taken in as wards under the Guardians and Wards Act of 1890, but as noted in Chapter One of this Part, guardianship does not give a child the full legal status of a family member.

The journal article published in October 2024 in the International Journal of Research and Innovation in Social Science, titled "Harmonizing Hope: The Urgency of a Uniform Adoption Law in Bangladesh," identifies the prohibition on adopting orphans as one of the most urgently discriminatory aspects of the current adoption law: the archaic concept of adoption is totally discriminatory towards female and orphaned children as shastric Hindu law does not approve adoption of an orphaned child or a female child.

5.2 The Guardians and Wards Act of 1890 as an Inadequate Substitute

The principal alternative to adoption for Hindu families wishing to provide a legal home for a child is the Guardians and Wards Act of 1890, which allows any person to apply to the courts for

appointment as the legal guardian of a minor child. The courts can appoint a guardian of the person (responsible for the child's upbringing and welfare) and/or a guardian of the property (responsible for managing the child's assets).

The Guardians and Wards Act applies to all children regardless of the religion of the guardian or the child, and it has been used by both Muslim and non-Muslim families who wish to provide care for children who are not their natural children. But guardianship under the 1890 Act is fundamentally different from adoption in several important respects that make it an inadequate substitute.

First, a ward does not have inheritance rights against the guardian. If the guardian dies, the ward is not entitled to a share of the guardian's estate under the rules of intestate succession. The ward's position in relation to the guardian's property is entirely dependent on any testamentary provision the guardian may have made, and if the guardian has made no will, the ward receives nothing.

Second, guardianship is not necessarily permanent. The Guardians and Wards Act provides for the termination of guardianship in various circumstances, and the guardianship relationship can be revised or ended by the courts if the circumstances change. Adoption, by contrast, is irrevocable and creates a permanent family relationship.

Third, a ward does not take the surname or the social identity of the guardian's family. The adoption of a child into a family creates a social identity and family membership that guardianship does not. This social dimension of adoption is particularly important in the Hindu community, where family membership has religious, ritual, and social dimensions beyond the purely legal.

Fourth, the Children Act of 2013, the most recent general legislation on child welfare in Bangladesh, provides for a system of foster care and institutional care for children without adequate parental support, but does not create any new institution of secular adoption applicable to Hindu children. It therefore fills some of the gaps left by the prohibition on adoption of orphans under the classical Hindu law, but it does not address the fundamental problem of the absence of a legal institution that creates permanent family membership for orphaned children.

5.3 The Rights of the Child Framework and Its Application to Adoption Law

The Convention on the Rights of the Child, ratified by Bangladesh in 1990, provides a powerful international human rights framework for the critique of the classical adoption law's prohibition on the adoption of orphans and of girls. Article 3 of the Convention provides that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interests of the child shall be a primary consideration.

The classical Hindu adoption law, which prohibits the adoption of orphaned children and of girls on theological grounds that have nothing to do with the welfare of those children, is in direct and

obvious conflict with this principle. A law that denies orphaned children the possibility of legal family membership on the ground that there is no one to perform the giving ceremony is a law that prioritises theological formalism over the welfare of the most vulnerable children. A law that denies girls the possibility of being adopted on the ground that girls cannot perform religious rites is a law that treats girls as less than full persons deserving of legal protection.

The Committee on the Rights of the Child's General Comment No. 14 (2013), cited in the October 2024 article on uniform adoption law in Bangladesh, elaborates the best interests principle in terms that are directly applicable to this context: the best interests of the child is a substantive right, an interpretive principle, and a rule of procedure. As an interpretive principle, it requires that whenever a domestic legal provision is open to more than one interpretation, the interpretation that most effectively serves the child's best interests should be chosen. Applied to the question of adoption, this principle would support interpreting any ambiguity in the adoption law in a manner that extends rather than restricts the possibilities of legal adoption for children who need it.

CHAPTER SIX: THE HINDU ADOPTIONS AND MAINTENANCE ACT OF INDIA, 1956: A COMPARATIVE ANALYSIS

6.1 The Architecture of the Indian Act

The Hindu Adoptions and Maintenance Act of 1956 is, together with the Hindu Succession Act of the same year, the most important piece of Hindu personal law legislation in the comparative framework for Bangladesh reform. It represents a comprehensive transformation of the classical law of adoption in India, and its detailed provisions provide a clear model for what a comprehensive Hindu Adoption Act in Bangladesh should contain.

The 1956 Act is organized in two parts: Part I deals with adoption (sections 1 to 17) and Part II deals with maintenance (sections 18 to 28). The two subjects are addressed in the same Act because they are intimately connected: adoption is frequently undertaken partly to secure maintenance in old age, and the maintenance obligations of adoptive parents are one of the principal legal consequences of adoption.

On adoption, the Act makes the following principal changes from the classical law. First, it allows females to adopt (section 8): any female Hindu who is of sound mind and is not a minor may take a son or daughter in adoption, provided that if she is married, she can only do so with the consent of her husband unless the husband has ceased to be a Hindu, has completely and finally renounced the world, has been declared by a court of competent jurisdiction to be of unsound mind, or has ceased to maintain contact with her for the prescribed period. This is a fundamental departure from the classical rule under which women had no independent adoption capacity.

Second, the Act allows the adoption of girls (section 10(i)): any person may be adopted, whether male or female. The restriction of adoption to boys is abolished. This is another fundamental departure from the classical law.

Third, the Act abolishes the caste restriction on adoption (section 10): the conditions for a person to be adopted are that he or she has not already been adopted, must not be married and must not have completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who are married or have completed the age of fifteen years being taken in adoption. There is no caste restriction.

Fourth, the Act does not require the Dattahoma ceremony (section 11): for a valid adoption, the giving and taking ceremony is required, but no specific ritual form is prescribed. What is required is that the child be actually given and taken in adoption; mere expression of intention or registration of an adoption deed without actual giving and taking is insufficient.

Fifth, the Act removes the restriction on adopting orphans by providing that the person giving the child in adoption may be the natural parent or the guardian if both parents are dead (section 9(4)): where both the parents are dead or have completely and finally renounced the world, or have been declared by a court of competent jurisdiction to be of unsound mind, or where the parentage of the child is not known, the guardian of the child may give the child in adoption with the previous permission of the court to any person under the conditions specified in any rules made by the State Government.

This provision, allowing guardians (including state authorities) to give orphaned children in adoption with court permission, addresses the classical rule's inability to accommodate the adoption of orphans. It is not a perfect solution, but it is a significant improvement that gives orphaned children a pathway to legal family membership that does not exist in Bangladesh today.

6.2 The Consequences of Adoption Under the 1956 Act

The consequences of adoption under the Indian 1956 Act reflect the retention of the transplantation theory, but in a form modified to accord with constitutional values and practical welfare considerations.

Section 12 of the Act confirms that an adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption. But section 12 also contains important qualifications: the proviso preserves the prohibited degrees of relationship in both the natural and the adoptive families for the purposes of marriage, and specifically provides that the adopted child shall not divest any person of any estate which vested in that person before the adoption.

The principle that the adopted child shall not divest any vested estate is particularly important. It means that if property has already vested in a person before the adoption takes place, the

adoption does not affect that vesting. This prevents adoption from being used as a device to frustrate the inheritance rights of persons who would otherwise take on an intestacy.

Section 13 of the 1956 Act provides for the right of adoptive parents to dispose of their property as they see fit, subject to any agreement to the contrary. This section confirms that adoption does not restrict the adoptive parents' testamentary freedom.

Section 15 of the Act provides that no adopted child shall be capable of being re-transferred in adoption to any other family, confirming the irrevocability of adoption under the Act.

6.3 Maintenance Under the Indian 1956 Act

The maintenance provisions of the Indian 1956 Act are addressed in Chapter Nine of this Part, in the context of the broader analysis of Hindu maintenance law in Bangladesh. Here it is sufficient to note that the Act's maintenance provisions are integrated with its adoption provisions in a way that is specifically relevant to the adoption context: the adoptive parents are obliged to maintain the adopted child, and the adopted child, when adult, is under a corresponding obligation to maintain the adoptive parents. This mutual obligation of maintenance is one of the practical incentives for adoption and one of the arguments for making the adoption framework as accessible as possible.

CHAPTER SEVEN: THE CURRENT ADOPTION LAW IN BANGLADESH: PRACTICAL REALITIES

7.1 How Adoption Actually Happens in Practice

The gap between the formal law of adoption and the actual practice of Hindu families in Bangladesh is wide and practically significant. In the formal law, adoption requires the Dattahoma ceremony, the presence of a learned priest, the express consent of the natural parents, the absence of a son in the adoptive family, the same-caste identity of the parties, and in the case of a widow adopting, prior authorisation from the deceased husband. In practice, many of these requirements are met imperfectly or not at all.

Studies of Hindu communities in rural Bangladesh, including those documented in publications by BLAST and Ain o Salish Kendra, reveal that adoptions in practice often take the form of informal arrangements within the extended family or close community circle, formalised by a document (the adoption deed) and witnesses but not always accompanied by the full Dattahoma ceremony. These informal adoptions may be socially recognised and morally binding within the community, but their legal status is uncertain and may be challenged by competing claimants to the adoptive father's estate.

The legal uncertainty of informal adoptions creates serious problems in practice. When the adoptive father dies, natural relatives who have not benefited from the adoption may challenge

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its validity, arguing that the Dattahoma was not properly performed, that the caste requirements were not met, or that the giving and taking ceremony was inadequate. The adopted son, who has spent his life within the adoptive family in the expectation of inheriting, may find himself in costly and uncertain litigation to establish the validity of his adoption.

7.2 The Adoption Deed and Its Evidentiary Value

The absence of a formal registration system for adoptions in Bangladesh means that the primary evidence of an adoption is the adoption deed, a private document executed at the time of the adoption recording the details of the giving and taking ceremony and the parties' intentions. The legal value of such a deed has been the subject of considerable case law.

The general principle established by the courts is that an adoption deed is evidence of the adoption but is not itself constitutive of the adoption. The deed records what happened; it does not create the legal relationship. A deed that accurately records a ceremony that was validly performed creates a strong presumption in favour of the validity of the adoption. A deed that purports to record a ceremony that was not in fact performed, or that was performed in an invalid manner, does not itself create a valid adoption.

This principle was reaffirmed in the Indian context by the Bombay High Court in Nivritti Pandurang Nale versus Uttam Ganu Nale in 2025, and it reflects the settled understanding in both Indian and Bangladeshi law. The practical implication is that Hindu families in Bangladesh who have completed adoption ceremonies should be encouraged to execute and preserve adoption deeds as evidence of those ceremonies, and that a comprehensive reform of adoption law should include provisions for the formal registration of adoptions that creates a more reliable and accessible record.

7.3 The Treatment of Adopted Children Under Other Laws

The legal status of the adopted son under Hindu personal law, which is well settled in its equality with the natural son, does not automatically determine his status under other laws that may intersect with the adoption. The Succession Act of 1925, which governs testamentary succession for Hindus, applies to the adopted son in the same way as to the natural son: he can inherit under a will, and the will may treat him as an equal beneficiary with natural sons or may discriminate between them as the testator sees fit.

The position of the adopted son under tax law, immigration law, and other statutory frameworks may raise separate questions that are not determined by Hindu personal law principles alone. These questions are beyond the scope of this treatise but are relevant to the comprehensive review of the legal position of adopted children in Bangladesh that a reform process should undertake.

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CHAPTER EIGHT: MAINTENANCE UNDER HINDU LAW IN BANGLADESH - THEORETICAL FOUNDATIONS

8.1 The Concept of Maintenance in Hindu Jurisprudence

Maintenance, or Nafaka in the Islamic tradition with which it is often compared, is the obligation to provide the necessities of life to persons who are legally dependent on the obligor. In the Hindu tradition, the obligation of maintenance arises from family membership and from the concept of Dharma: a person who has the means to provide for dependent family members is under a Dharmic obligation to do so, and this obligation is enforceable by law.

The concept of maintenance in Hindu jurisprudence is connected to the broader concept of family as an institution of mutual obligation. The family is not merely a social unit; it is a moral and religious community in which members have binding obligations to one another that go beyond what contract or commercial exchange could create. The husband's obligation to maintain his wife is not a contractual obligation; it is a moral and religious duty that arises from the marriage relationship itself and that cannot be discharged by mutual agreement between the parties alone.

This understanding of maintenance as arising from moral and religious obligation rather than from contract has important practical consequences. Unlike a contractual debt, the obligation of maintenance does not require any consideration or exchange. A Hindu husband is obliged to maintain his wife whether or not she has provided him with any specific benefit. A Hindu father is obliged to maintain his minor children whether or not they have done anything to earn his support. The obligation arises from the relationship alone.

The Dharmasastra texts are fairly specific about the categories of persons entitled to maintenance and the categories of persons obliged to provide it. The obligor is primarily the head of the family, the person who controls the family property. The entitled persons are the wife, minor children, aged and infirm parents, and in some circumstances, other dependent relatives.

8.2 Sources of the Maintenance Obligation in Bangladesh

The maintenance obligations of Hindu family members in Bangladesh derive from multiple sources, none of which is fully codified or comprehensively accessible. The primary sources are:

The classical Dayabhaga texts and the commentaries that interpret them, which establish the general framework of maintenance obligations. The Manusmriti and the Yajnavalkya Smriti both address maintenance, providing the basic categories of entitled persons and the general principles governing the quantum of maintenance.

The Hindu Married Women's Right to Separate Residence and Maintenance Act of 1946, which provides a specific statutory right of separate residence and maintenance for Hindu married women in defined circumstances. This Act is the most important statutory intervention in Hindu maintenance law in Bangladesh and is examined in detail in Chapter Nine.

The Maintenance of Parents Act of 2013, which provides a general maintenance obligation applicable to persons of all religions, requiring adult children to maintain their aged and infirm parents. This Act supplements the personal law maintenance obligations and provides a separate statutory remedy.

The Family Courts Ordinance of 1985, which establishes the family courts as the primary forum for the adjudication of maintenance claims, provides procedural rules for maintenance litigation. The family courts have jurisdiction over maintenance claims in Hindu personal law as well as Muslim personal law matters.

The general law of maintenance as developed by the courts through case law, drawing on the classical texts and the statutory provisions, and applying general principles of equity and justice to specific circumstances.

These multiple sources create a complex and not entirely consistent framework of maintenance law, and the case for codification in a comprehensive Hindu Adoptions and Maintenance Act is reinforced by the same arguments of clarity, accessibility, and consistency that support the codification of the adoption and succession rules.

CHAPTER NINE: THE HINDU MARRIED WOMEN'S RIGHT TO SEPARATE RESIDENCE AND MAINTENANCE ACT, 1946

9.1 The Legislative History and Political Context

The Hindu Married Women's Right to Separate Residence and Maintenance Act of 1946 was the last significant piece of Hindu personal law legislation enacted before the partition of British India. It was enacted in response to advocacy by women's organisations and legal reformers who had been pressing for a statutory right of maintenance for Hindu wives who were separated from their husbands or who had been abandoned.

The 1946 Act was a limited reform measure, more significant for what it failed to achieve than for what it accomplished. It provided a statutory right of separate residence and maintenance for a Hindu wife who was separated from her husband in certain defined circumstances, but it did not address the general right of a Hindu wife to maintenance from her husband, which remained governed by the classical common law rather than by any statute.

The Act remains in force in Bangladesh today, and its provisions continue to govern the most important practical dimension of Hindu maintenance law for married women: the circumstances in which a wife can claim a right of separate residence and maintenance without terminating the marriage (since, as Part Two established, Hindu marriage law in Bangladesh does not recognise divorce).

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9.2 The Grounds for Separate Residence and Maintenance Under the 1946 Act

The 1946 Act provides that a Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance in the following circumstances:

First, if the husband is suffering from a virulent form of leprosy that makes the physical separation of the couple necessary for the wife's safety.

Second, if the husband has any other wife living in the same residence, or has contracted another marriage, and the co-wife's presence causes the first wife reasonable grievance or apprehension.

Third, if the husband has been guilty of such cruelty as makes it unsafe or undesirable for the wife to live with him.

Fourth, if the husband has deserted the wife for a period of not less than two years.

Fifth, if the husband has converted to a religion other than Hinduism.

Sixth, if the husband keeps a concubine in the house in which the wife resides or habitually resides with a concubine elsewhere.

Seventh, if there is any other cause justifying her living apart, not specifically enumerated.

These grounds reflect the social concerns of the 1940s when the Act was drafted and betray their vintage in several ways. The inclusion of leprosy as a specific ground (a disease that has now been largely eliminated in Bangladesh) and the absence of any reference to domestic violence in contemporary terms (the reference to cruelty is present but vague and was interpreted narrowly by the earlier courts) reflect the period in which the Act was drafted. The broad final ground of "any other cause justifying her living apart" gives the courts some flexibility, but the narrow interpretation of specific grounds has historically limited the Act's effectiveness.

9.3 The Quantum of Maintenance Under the 1946 Act

The 1946 Act provides that the quantum of maintenance payable to a Hindu wife who is entitled to live separately is to be determined by the courts having regard to the husband's means and the wife's requirements. The courts have developed a body of case law on the principles relevant to determining quantum, but this case law is somewhat inconsistent and does not provide the clear guidance that a statutory formula would supply.

The academic article published in October 2025 in the International Journal of Research and Innovation in Social Science on the development of maintenance of Hindu married women in Bangladesh notes the inadequacy of the current framework: despite progressive legal frameworks, challenges remain in the practical enforcement of maintenance rights, societal attitudes, and awareness among women of their entitlements. The article calls for continued

reforms, awareness campaigns, and judicial interventions to make maintenance rights more effective and accessible.

The quantum question is also affected by the general principle that maintenance is a personal obligation of the husband arising from the marital relationship, not a charge on any specific property. This means that even if the husband has no property at the time of the maintenance claim, the obligation subsists and can be enforced if he subsequently acquires property. But it also means that determining the appropriate quantum requires an assessment of the husband's means, which is subject to the evidentiary difficulties that beset all proceedings in which one party controls the relevant financial information.

9.4 Enforcement Problems and Access to Justice

The practical enforcement of maintenance rights under the 1946 Act and the general common law of maintenance in Bangladesh faces several serious obstacles that limit the effectiveness of the formal legal rights the law provides.

The first obstacle is the cost and complexity of litigation. Maintenance claims must be brought in the family courts, and the procedural requirements of family court litigation are beyond the practical reach of many Hindu women in rural Bangladesh without significant legal assistance. The family courts are in urban areas; the women who most need maintenance may be in remote rural locations without access to legal aid or affordable lawyers.

The second obstacle is the cultural and social pressure on women not to litigate against their husbands and in-laws. In communities where women are expected to maintain family harmony and to subordinate their individual interests to family cohesion, a woman who brings a maintenance claim in court is often seen as having violated community norms, regardless of how justified her claim may be. This social pressure is a significant deterrent to enforcement.

The third obstacle is the enforcement of maintenance orders once obtained. The courts can make orders for maintenance, but collecting on those orders when the husband is unwilling to pay requires further enforcement proceedings that are again costly and time-consuming. The absence of an effective wage attachment mechanism specifically for maintenance orders means that many maintenance orders are made but never effectively enforced.

CHAPTER TEN: MAINTENANCE OF THE HINDU WIDOW

10.1 The Classical Rules and Their Development

The Hindu widow's right to maintenance from her deceased husband's estate, or from the family of her deceased husband, is one of the oldest established rights in the Hindu legal tradition. The Manusmriti and the Yajnavalkya Smriti both establish that a widow is entitled to maintenance

from the family property. The colonial courts developed this principle into a fairly well-established common law right, enforceable in the civil courts.

The widow's maintenance right in Bangladesh derives primarily from her position as an heir to her husband's estate under the Hindu Women's Rights to Property Act of 1937. As examined in Part Three, the widow takes the same share as a son from her husband's estate, though as a limited estate holder rather than an absolute owner. Her right to maintenance arises both from this inherited limited estate (she has the right to the income of the property for her maintenance) and from the personal obligation of her husband's surviving family members (primarily his sons) to maintain her.

The obligation of the sons to maintain their widowed mother is a well-established rule of Hindu law in Bangladesh. A Hindu son is obliged to maintain his mother out of the family property and out of his own means, and this obligation is enforceable in the family courts. The case of Matilalsarkar and Others versus Brajabashi Biswas and Others, cited in the BD Law Post analysis of maintenance rights (December 2024), establishes that a wife or widow is entitled to maintenance out of the property of her husband or late husband, and if the husband left no estate to her father-in-law, the father-in-law is morally bound to maintain her.

10.2 Maintenance Rights of Widows Under the Maintenance of Parents Act, 2013

The Maintenance of Parents Act of 2013 is a secular statute applicable to all Bangladeshis regardless of religion that creates a statutory obligation on adult children to maintain their aged and infirm parents. The Act provides that any parent who is unable to maintain himself or herself may apply to the court for an order requiring his or her adult children to pay maintenance.

The 2013 Act is relevant to the situation of Hindu widows in Bangladesh in two ways. First, a Hindu widow who has adult children is entitled to claim maintenance from those children under the Act, in addition to any rights she may have under Hindu personal law. The Act is therefore a supplement to, not a replacement for, the personal law maintenance rights.

Second, the 2013 Act demonstrates that the Bangladesh legislature is capable of enacting legislation that addresses the maintenance needs of dependent family members in a secular and non-discriminatory framework. The existence of this Act strengthens the case for a comprehensive Hindu Adoptions and Maintenance Act that would address the maintenance needs of Hindu women in a similarly clear and accessible way.

The first significant ruling under the 2013 Act, involving a widow named Aleya Begum who sued her eldest son and daughter-in-law for refusing maintenance over sixteen to seventeen years, resulted in the son being fined BDT 80,000 and the daughter-in-law BDT 70,000 by the Senior Judicial Magistrate Court in Rangamati. This ruling, noted in the October 2025 article on maintenance law in Bangladesh, demonstrates that the courts are willing to enforce maintenance obligations against unwilling family members, and that the statutory framework provided by the 2013 Act gives them a more accessible tool for doing so than the classical personal law rules.

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10.3 The Problem of the Widow Who Remarries

The Hindu Widow's Remarriage Act of 1856 allows Hindu widows to remarry, a reform that was radical in its time and has remained in force in Bangladesh as in India. But the 1856 Act contains a provision that creates a serious problem for widows who wish to exercise this right: section 2 provides that all rights and interests which any widow may have in her deceased husband's property by way of inheritance shall, upon her marriage, cease and determine as if she had then died.

This provision means that a Hindu widow in Bangladesh who exercises her legal right to remarry automatically loses all her inheritance rights in her deceased husband's estate. She forfeits the limited estate she holds under the 1937 Act, she forfeits any Stridhana she may have inherited from her husband, and she loses any maintenance rights she may have against her husband's family. The effect of this provision is to impose a severe economic penalty on the exercise of a legal right.

The constitutional challenge to this provision is straightforward: it penalises a woman for exercising a legal right (the right to remarry), and the penalty is applied specifically and exclusively to women (there is no analogous provision penalising a widower who remarries for exercising his legal right). This gender-specific penalty is a clear case of discrimination on grounds of sex under Articles 27 and 28 of the Constitution.

The provision of the 1856 Act penalising widows who remarry has been retained in Bangladesh for over a century and a half after its enactment. It represents one of the more symbolically significant examples of the way in which colonial-era legislation, enacted in a specific and now completely superseded social context, has been allowed to persist without reform in ways that continue to damage the lives of the people it affects.

CHAPTER ELEVEN: MAINTENANCE OF CHILDREN UNDER HINDU LAW IN BANGLADESH

11.1 The Obligation to Maintain Minor Children

The obligation of a Hindu father to maintain his minor children is one of the clearest and least contested principles of Hindu personal law in Bangladesh. The Manusmriti and the Yajnavalkya Smriti both establish this obligation clearly, the colonial courts gave it consistent effect, and the family courts of Bangladesh continue to enforce it as a matter of settled law.

Under the Dayabhaga school as applied in Bangladesh, the father is the primary obligor for the maintenance of minor children. The obligation extends to all minor children, both sons and daughters, though as noted in Chapter Eleven of Part Three, there is an asymmetry in the law's treatment of sons and daughters: a minor son is to be maintained until he attains majority, while a

daughter is to be maintained only until her marriage. After marriage, the daughter's maintenance obligation shifts to her husband and his family.

This asymmetry in maintenance obligations for sons and daughters reflects the broader gender inequality of the system: a son, who will eventually inherit and manage family property, is supported by the family as a future stakeholder. A daughter, who will leave the family on marriage and join another family, is supported only until the moment of her transfer to that other family. The reform of this asymmetry requires either removing the age distinction for daughters (maintaining daughters beyond marriage as sons are maintained beyond majority), or addressing the underlying inheritance inequality that makes daughters economically dependent on their husbands' families.

11.2 The Mother's Obligation of Maintenance

The mother's obligation of maintenance for her children is a secondary obligation under Hindu law: it arises primarily when the father is unable to meet his maintenance obligations, whether through poverty, incapacity, or death. If the father has died and left no estate capable of supporting the children, the mother's Stridhana and any other property she holds may be used for the maintenance of the children.

The BD Law Post analysis of maintenance rights in Hindu law (December 2024) notes the case law principle that in the case of children, a minor son is to be maintained under the Dayabhaga School and a daughter is to be maintained until her marriage. The article also notes the general principle that the maintenance of the wife by the husband is a matter of personal obligation arising from the existence of the relationship and is not dependent on the husband's possession of ancestral or self-acquired property.

This principle that the husband's maintenance obligation is independent of his property holdings is an important protection for wives whose husbands have dissipated or hidden their assets. But it also creates an enforcement problem: if the husband genuinely has no assets and no income, the maintenance order, while legally sound, may be practically unenforceable.

11.3 Maintenance and the Right to Education

The classical Hindu maintenance rules address the provision of food, clothing, and shelter to dependent family members. They do not specifically address the right to education. But in the contemporary context, where education is essential to economic participation and where the denial of education is itself a form of deprivation, a modern Hindu maintenance law should address the education of dependent children as a component of the maintenance obligation.

The Children Act of 2013 recognises education as an element of child welfare more broadly, and the constitutional provisions on the right to education (Article 17 of the Constitution) provide a basis for including education in the content of the maintenance obligation. A comprehensive Hindu Adoptions and Maintenance Act should provide specifically that the maintenance of minor children includes provision for their education up to a defined level.

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CHAPTER TWELVE: CONSTITUTIONAL DIMENSIONS OF ADOPTION AND MAINTENANCE LAW

12.1 The Constitutional Framework Applied to Adoption

The constitutional analysis of Hindu adoption law in Bangladesh begins with the same provisions examined in relation to succession law in Part Three: Articles 27 and 28 of the Constitution, which guarantee equality before the law and prohibit discrimination on grounds of religion, race, caste, sex, or place of birth.

The application of these provisions to Hindu adoption law yields the following constitutional conclusions. The prohibition on women adopting without their husbands' authorisation is discrimination on grounds of sex, prohibited by Article 28. The prohibition on adopting girls is discrimination on grounds of sex (specifically on the sex of the child to be adopted), prohibited by Article 28. The caste restriction on adoption is discrimination on grounds of caste, specifically prohibited by Article 28. The prohibition on adopting orphans is not directly a form of discrimination on grounds of a protected characteristic, but it raises issues under Article 28(4), which allows the state to make special provisions for the advancement of women or children. A law that denies legal family membership to orphaned children is a law that fails to make special provision for the advancement of children in their most vulnerable condition.

Article 28(4) of the Constitution of Bangladesh also deserves specific attention in the adoption context. It provides that nothing in Article 28 shall prevent the state from making special provisions in favour of women or children or for the advancement of any backward section of citizens. This provision could be read as affirmatively authorising the state to enact legislation specifically expanding the rights of women to adopt and the rights of children to be adopted, beyond whatever the classical law may provide. The adoption provisions of the proposed Hindu Adoptions and Maintenance Act for Bangladesh would be specifically authorised by this provision.

12.2 Convention on the Rights of the Child and Bangladesh's Obligations

Bangladesh ratified the Convention on the Rights of the Child in 1990. The Convention's provisions, particularly Article 3 on the best interests of the child, Article 7 on the right to a name and family relations, Article 20 on the rights of children deprived of their family environment, and Article 21 on adoption, all bear on the reform of Hindu adoption law.

Article 21 of the Convention addresses adoption specifically, providing that states parties that recognise and permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration. It further requires that adoption can only be authorised by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the

child's status concerning parents, relatives, and legal guardians and that, if required, the persons concerned have given their informed consent.

The requirement that adoption be authorised by competent authorities and that the best interests of the child be paramount represents a significant departure from the classical Hindu adoption framework, which requires the consent of the natural parents but does not require any judicial or administrative authorisation, and which does not use any concept equivalent to the best interests of the child as an organising principle. A reformed Hindu adoption law that incorporates judicial oversight of adoptions and the best interests principle would be more consistent with Bangladesh's obligations under Article 21 of the Convention.

12.3 The Right to Identity and Family Life

The right to identity and family life, recognised in several international human rights instruments including the Convention on the Rights of the Child (Articles 7 and 8) and the International Covenant on Civil and Political Rights (Article 17 and Article 23), has implications for the reform of both adoption and maintenance law. Children who are denied legal family membership through the prohibition on adopting orphans or girls have a diminished right to identity and family life. Women who are denied effective maintenance rights are unable to maintain the minimum material conditions necessary for participation in family life. These connections between property rights, maintenance, adoption, and the right to family life reinforce the case for comprehensive reform.

CHAPTER THIRTEEN: THE REFORM EXPERIENCE OF INDIA AND NEPAL

13.1 India's Hindu Adoptions and Maintenance Act of 1956 in Practice

The Indian Hindu Adoptions and Maintenance Act of 1956 has been in operation for nearly seventy years, and the accumulated experience of its application provides important lessons for Bangladesh.

On the positive side, the 1956 Act has transformed the practical landscape of Hindu adoption in India. Women now adopt regularly and with legal certainty. Girls are adopted by families who wished to provide for them or who had no sons. The caste restriction is no longer a legal bar to adoption, though in practice many families continue to prefer within-caste adoption for social reasons. Orphaned children can be adopted through the mechanism of court-authorised guardians giving them in adoption.

The Act has also been supplemented by the Juvenile Justice Act of 2015, which creates a separate secular adoption framework for children of all religions who are legally free for adoption (including orphaned, abandoned, and surrendered children). This secular framework operates alongside the Hindu adoption framework and has expanded the possibilities for childless couples, regardless of religion, to adopt children in need of a family.

On the negative side, the 1956 Act has limitations that have been recognised in subsequent legislative and judicial developments. The requirement of the giving and taking ceremony, while relaxed from the Dattahoma requirement, still creates evidential difficulties in some cases. The provision on women adopting, while a major improvement on the classical law, still requires the husband's consent in the case of a married woman, which has been the source of dispute in cases where the husband's consent was claimed to have been given but the evidence is disputed.

The 2025 judgment of the Bombay High Court in Nivritti Pandurang Nale reaffirms the continuing importance of the giving and taking ceremony as the constitutive act of adoption under the 1956 Act, and demonstrates that the courts continue to grapple with evidential questions about the completeness of the adoption process even after seventy years of operating under the Act.

13.2 Nepal's National Civil Code of 2017 on Adoption

Nepal's National Civil Code of 2017 takes a significantly different approach to adoption from either the Indian 1956 Act or the classical Hindu law. The Code creates a largely secular, non-religious framework for adoption, applicable to Hindus and others alike, that is organised around the welfare of the child rather than the religious needs of the adoptive parents.

Under the Code, both men and women have equal capacity to adopt. The adoption of both boys and girls is permitted. There is no caste restriction. The court's approval is required for all adoptions, ensuring that a public authority applies the best interests test to each adoption decision. The natural parents' consent, or in the case of orphans the consent of the competent authority, is required. And the consequences of adoption are defined in terms of the welfare of the child and the family relationships created, rather than in terms of the religious functions the adopted child will perform.

Nepal's approach represents a more radical departure from the classical tradition than India's 1956 Act, and its consistency with international standards on adoption is correspondingly greater. The question for Bangladesh reform advocates is whether the Bangladeshi Hindu community would accept a similarly comprehensive reform, or whether the Indian model, which retains more of the structure of Hindu adoption while eliminating its most discriminatory features, is more politically achievable.

The 2024 article on harmonising adoption law in Bangladesh, published in the International Journal of Research and Innovation in Social Science, argues that Bangladesh needs a uniform adoption law applicable across communities, modelled on international standards including the Convention on the Rights of the Child. This is essentially the Nepalese approach applied to Bangladesh. Whether this is achievable in the current political environment is uncertain, but it represents the most coherent solution to the problem of adoption law in a multi-religious state.

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CHAPTER FOURTEEN: THE MAINTENANCE OF AGED PARENTS AND THE INTERGENERATIONAL OBLIGATION

14.1 The Obligation to Maintain Aged Parents Under Hindu Law

The obligation of adult children to maintain their aged parents is one of the most deeply rooted principles of Hindu personal law. The Dharmasastra tradition consistently identifies the care of parents as among the most fundamental of all family duties. The Manusmriti places the service of father and mother among the highest obligations of a householder. The concept of Pitru Rin, the debt owed to one's parents, is one of the three fundamental debts that the Hindu tradition recognises as binding on every person from birth.

This deep moral and religious grounding of the obligation to maintain aged parents means that in practice, the obligation is frequently discharged without legal compulsion. Most Hindu families in Bangladesh care for their aged members out of genuine filial duty and social expectation, without any need for legal enforcement. But in cases where the family structure has broken down, where property disputes have created hostility between parents and children, or where economic pressures have led adult children to prioritise their own immediate needs over those of their aged parents, the legal obligation becomes practically important.

The legal framework for enforcing the obligation to maintain aged parents in Bangladesh consists of: the classical Dayabhaga rules establishing the personal obligation; the Maintenance of Parents Act of 2013, which provides a statutory remedy applicable to all communities; and the general family court jurisdiction over maintenance claims.

14.2 The Interaction of Inheritance and Maintenance Obligations

The relationship between inheritance rights and maintenance obligations in Hindu law is one of the most practically important features of the system and one of the most poorly understood by non-specialists.

The general principle is that the obligation of maintenance is connected to but not identical with the right of inheritance. A son who inherits his father's property is expected to maintain his widowed mother out of that property. A daughter who inherits Stridhana from her mother may have corresponding maintenance obligations towards surviving family members. The person who takes the property is generally expected to shoulder the maintenance obligations that come with it.

But the connection is not absolute. The obligation of maintenance is a personal obligation; it exists independently of any specific property holding. A son who inherits no property may still be obliged to maintain his widowed mother out of his own earnings. A daughter who has received no inheritance may still have a moral and (under the Maintenance of Parents Act) legal obligation to contribute to her parents' maintenance.

The reform of inheritance law to give daughters equal rights with sons has implications for the allocation of maintenance obligations. If daughters inherit equally with sons, there is no principled reason why daughters should not bear equal maintenance obligations with sons. The current asymmetry, in which sons inherit predominantly and bear the primary maintenance obligations while daughters are excluded from inheritance and therefore bear lesser maintenance obligations, reflects the same underlying gender inequality that the reform of inheritance law addresses. A comprehensive reform should address both sides of this equation.

CHAPTER FIFTEEN: THE PROPOSED HINDU ADOPTIONS AND MAINTENANCE ACT FOR BANGLADESH

15.1 The Architecture of a Comprehensive Statute

Drawing on the analysis of all preceding chapters, on the comparative experience of India and Nepal, on the constitutional framework of Bangladesh, and on the most recent scholarly analysis of adoption and maintenance law in the region (including the October 2024 article on uniform adoption law and the October 2025 article on Hindu maintenance law), the following structure is proposed for a comprehensive Hindu Adoptions and Maintenance Act for Bangladesh.

The Act should be structured in two main parts: Part I on Adoption (chapters one through eight) and Part II on Maintenance (chapters nine through fifteen). The integration of adoption and maintenance in a single statute follows the Indian model and reflects the intimate connection between the two subjects.

Chapter I of Part I: Preliminary. Short title, commencement, application, and definitions. The definition of Hindu should follow the inclusive model of the Indian Acts. Key terms should include: adoption, adoptive parent, natural parent, given child, orphan, guardian, best interests of the child.

Chapter II: Capacity to Adopt. The proposed provisions: any Hindu adult (male or female) of sound mind who does not have a son or daughter (natural or adopted) and who is not a minor may adopt a child. The requirement that the adoptive parent has no son should be abolished, replacing it with a more flexible standard based on the circumstances of the family and the welfare of the child to be adopted. A married person may adopt with the consent of the spouse; a single, widowed, or divorced person may adopt without requiring any spousal authorisation.

Chapter III: Persons Who May Be Adopted. Any child (male or female) who has not already been legally adopted, who is a Hindu, and who has not attained the age of fifteen years (subject to customary exceptions), may be adopted. The prohibition on adopting girls is abolished. There is no caste restriction on adoption.

Chapter IV: Persons Who May Give in Adoption. A natural parent (father or mother) may give a child in adoption with the consent of the other natural parent. Where both natural parents are

dead, have renounced the world, have been declared of unsound mind, or are of unknown identity, the guardian of the child may give the child in adoption with the prior permission of the Family Court. This provision removes the prohibition on adopting orphans.

Chapter V: Conditions for a Valid Adoption. A valid adoption requires: the capacity of the adoptive parent; the capacity of the child to be adopted; the actual giving and taking of the child with intent to adopt; and the giving of consent by the natural parents or guardian. No specific religious ceremony is required for the validity of the adoption. An adoption deed recording the adoption is required and must be registered.

Chapter VI: Registration of Adoption. Every adoption shall be registered in the Adoption Register maintained by the District Registrar within thirty days of the adoption. The registration shall create a presumption that the adoption was validly performed. The government shall prescribe a standard form for adoption deeds.

Chapter VII: Effects of Adoption. The adopted child shall be deemed to be the child of the adoptive parent or parents for all purposes under this Act and under all other applicable laws. The adopted child shall have the same rights of inheritance and maintenance as a natural child. The adopted child shall not divest any vested estate. The natural family ties of the adopted child shall be severed, subject to the preservation of prohibited degrees of relationship for the purposes of marriage. The adopted child shall retain any rights that vested in him or her before the adoption.

Chapter VIII: Miscellaneous Provisions on Adoption. Including provisions on: the irrevocability of adoption; the effect of adoption on existing property rights; the competence of the Family Court to settle disputes about the validity of adoption; and the provision for the welfare of children in adoption proceedings.

Chapter IX of Part II: Maintenance of Wife. A Hindu wife shall be entitled to be maintained by her husband during her lifetime. The obligation of maintenance is personal and is not dependent on the husband's possession of any specific property. The wife shall be entitled to claim maintenance in a sum that enables her to maintain herself in a standard appropriate to the husband's station in life. The specific grounds under which a wife is entitled to live separately and claim separate maintenance are updated to include: domestic violence as defined in the Domestic Violence (Prevention and Protection) Act, 2010; any form of cruelty; desertion for any period; the husband's marriage to another person; the husband's conviction for an offence of domestic violence or sexual offences; and any other cause justifying her living apart.

Chapter X: Maintenance of Widows. A Hindu widow shall be entitled to maintenance from the estate of her deceased husband and from her husband's sons and other heirs who have inherited from him, in proportion to the value of what they have inherited. The widow's entitlement to maintenance is not terminated by any change in the family composition after the husband's death. The widow's right to maintenance shall continue for her lifetime and shall not be extinguished by her remarriage, though the amount of maintenance payable may be reviewed by the court after remarriage in light of the changed circumstances.

Chapter XI: Maintenance of Children. The father and mother of a Hindu minor child are jointly and equally obliged to maintain that child. The obligation extends to daughters as well as sons, and continues until the child attains the age of majority or, in the case of a daughter who is in full-time education, until the completion of her education. The obligation includes provision for education. The court, in determining maintenance for children, shall have regard to the best interests of the child as the paramount consideration.

Chapter XII: Maintenance of Aged and Infirm Parents. Adult Hindu children are obliged to maintain their aged and infirm parents who are unable to maintain themselves. This obligation is in addition to any obligations under the Maintenance of Parents Act of 2013. The obligation falls equally on sons and daughters.

Chapter XIII: The Quantum of Maintenance. The court, in determining the quantum of maintenance, shall have regard to: the means of the obligor; the needs of the entitled person; the standard of living to which the entitled person is accustomed; the cost of living in the relevant area; and any other circumstances that the court considers relevant. The Act should specify a minimum standard of maintenance below which no award can fall.

Chapter XIV: Enforcement of Maintenance Orders. Maintenance orders made under this Act shall be enforceable by: attachment of the obligor's earnings at source; attachment of the obligor's bank accounts; seizure and sale of the obligor's movable property; and in cases of persistent default, imprisonment as a measure of last resort. The court shall have jurisdiction to review maintenance orders at any time on the application of either party in the event of a material change in circumstances.

Chapter XV: Miscellaneous. Including provisions for the relationship of this Act to other laws, transitional provisions, and the review of the Act by the Law Commission within five years of enactment.

15.2 The Child's Voice in Adoption Proceedings

One of the most important innovations that a reformed Hindu Adoption Act for Bangladesh should incorporate, drawing on the Convention on the Rights of the Child and the comparative experience of modern adoption law in other jurisdictions, is the provision for the child's own voice in adoption proceedings. Article 12 of the Convention on the Rights of the Child provides that states parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, with the views of the child being given due weight in accordance with the age and maturity of the child.

Under the classical adoption law, the child to be adopted has no voice in the process: the adoption is a transaction between the natural parents and the adoptive parents, with the child as the object rather than the subject. A modern law should change this by requiring that the Family Court, before approving an adoption, ascertain the wishes of the child if the child is of sufficient maturity to form and express them, and give those wishes due weight in the decision whether to approve the adoption.

This provision would represent a fundamental reorientation of the adoption institution, from a transaction between adults to an act that is centred on the welfare and agency of the child. It is a reorientation that is required by Bangladesh's obligations under the Convention on the Rights of the Child and that reflects the contemporary global consensus on the proper understanding of adoption as a child welfare institution.

15.3 The Process of Legislative Reform

The process of achieving the legislative reform proposed in this Part requires the same combination of community consultation, Law Commission engagement, parliamentary advocacy, and civil society pressure that was outlined in Part Three for inheritance law reform. But the adoption and maintenance reform has some distinctive political features that deserve attention.

First, the adoption reform is in some respects more politically accessible than the inheritance reform, because the resistance to adoption reform comes primarily from theological conservatism rather than from economic self-interest. The reversioners who resist inheritance reform have a direct financial stake in the outcome. Those who resist adoption reform on theological grounds are defending a theological principle rather than a direct economic interest, and theological principles can more readily be addressed by scholarly engagement and education.

Second, the child welfare dimension of adoption reform provides a potent rhetorical and moral argument that transcends community boundaries. The image of an orphaned child who cannot be legally adopted because no one can perform the Dattahoma ceremony on their behalf is a powerful argument for reform that can engage the sympathy of the wider Bangladeshi public, not just the Hindu community.

Third, the maintenance reform, particularly the maintenance of aged parents, has a social welfare dimension that connects it to the concerns of the wider population. The Maintenance of Parents Act of 2013 already establishes a secular obligation to maintain aged parents that applies to all Bangladeshis. A Hindu Adoptions and Maintenance Act that provides a comparable specific Hindu personal law framework for this obligation is building on an established statutory foundation rather than proposing an entirely new legal concept.

CONCLUSION TO PART FOUR

Families Made and Sustained by Law

Part Four has examined two dimensions of Hindu personal law that are, in a sense, the alpha and the omega of family life: adoption, through which families are created and extended beyond their biological origins, and maintenance, through which families sustain their most vulnerable members through the inevitable crises of incapacity, bereavement, and old age. In both domains,

the law currently operative in Bangladesh fails the people it governs, and fails them specifically along lines of gender and theological formalism that have no place in a constitutional democracy.

The adoption law fails orphaned children who cannot be legally adopted because there is no one to give them in the ceremony the ancient law requires. It fails girls who cannot be adopted because the theological framework that justifies adoption sees no religious function for a female child. It fails women who want to adopt but cannot do so without their husbands' prior authorisation. It fails families that might cross caste lines to provide a child with a loving home but are legally prohibited from doing so. These are not abstract legal deficiencies; they are real human situations in which real people suffer real harm because a legal system frozen in time refuses to adapt to their needs.

The maintenance law fails widows who lose the limited legal protection they enjoyed from their husbands' estates if they exercise their legal right to remarry. It fails daughters who are supported only until their marriage, as if their needs and their claims on their parents' care expire at the moment of the marriage ceremony. It fails aged parents whose adult daughters have no obligation of maintenance equivalent to that of adult sons, because the asymmetry of inheritance has created an asymmetry of obligation. These failures are systemic; they cannot be addressed case by case through the courts; they require the comprehensive legislative attention that this Part has sought to provide.

The proposed Hindu Adoptions and Maintenance Act, sketched in Chapter Fifteen, represents an attempt to provide that legislative attention in a form that is comprehensive, constitutionally grounded, consistent with Bangladesh's international obligations, and appropriately sensitive to the genuine values and traditions of the Hindu community. It draws on the Indian experience of the 1956 Act, on the Nepalese experience of the 2017 National Civil Code, on the scholarship published through 2025 and 2026 on the current state of the law, and on the advocacy proposals of civil society organisations working on this issue in Bangladesh.

The five remaining Parts of this treatise will address the remaining domains of Hindu personal law in Bangladesh: Part Five on guardianship and the welfare of children, Part Six on the Hindu community's property rights in collective religious institutions and temples, Part Seven on caste discrimination and its relationship to personal law, Part Eight on the interface between Hindu personal law and the criminal law of Bangladesh, Part Nine on the vested and enemy property crisis and its legal remedies, Part Ten on the rights of indigenous Hindu communities and their customary laws, Part Eleven on the comparative framework of South Asian Hindu law in a globalised world, Part Twelve on the political economy of minority rights and personal law reform in Bangladesh, Part Thirteen on the role of civil society and legal aid in personal law reform, Part Fourteen on the judicial interpretation of Hindu law in the courts of Bangladesh from 1971 to the present, Part Fifteen on the constitutional framework for a comprehensive personal law reform, and Part Sixteen, the concluding Part, on the path to a modern Hindu personal law for Bangladesh and the political will required to walk it.

The argument of this entire work is the argument that was stated in the Foreword to Part One: that thirteen million citizens of Bangladesh deserve a legal system that treats them as full human

beings possessed of dignity, equality, and the capacity for self-determination. That argument is nowhere more pressing than in the domains of adoption and maintenance law that Part Four has examined. Children deserve families. Families deserve legal protection. People who are old and ill and dependent deserve care. The law should provide for these needs without discriminating on grounds of gender, caste, or the theological formalism of a tradition that, at its best, shared these values and, at its most distorted, has been used to deny them.

BIBLIOGRAPHY AND FURTHER READING FOR PART FOUR

On Hindu adoption law in Bangladesh generally, the Law Help BD article on adoption under Hindu law in Bangladesh (lawhelpbd.com, 2024 update) and the BD Law Post analysis of adoption-related laws in Bangladesh (December 2024) provide the most accessible current summaries of the applicable law for practitioners. The Counsels Law Partners analysis of adoption and legal guardianship in Bangladesh (March 2024) provides a useful practical overview comparing Hindu adoption with the guardianship framework.

On the reform agenda, the article "Harmonizing Hope: The Urgency of a Uniform Adoption Law in Bangladesh" published in the International Journal of Research and Innovation in Social Science (October 2024) is the most comprehensive and recent academic analysis of the need for adoption law reform in Bangladesh. The analysis by Mokarramus Shaklan on harmonising Hindu personal laws with constitutional principles (Lawyers Club Bangladesh, March 2025) provides the constitutional framework.

On the classical sources of Hindu adoption law, Nanda Pandit's Dattaka Mimansa and the Dattaka Chandrika are the foundational texts. P.V. Kane's History of Dharmasastra (Vol. III) provides the most comprehensive scholarly analysis. Werner Menski's Hindu Law: Beyond Tradition and Modernity (OUP, 2003) provides the jurisprudential analysis of adoption within the broader Hindu legal tradition.

On the Indian Hindu Adoptions and Maintenance Act of 1956, the recent article on "Past and Present of Hindu Adoption Law" published in JETIR (March 2024) and the LawCurb analysis of adoption under the HAMA (January 2026) provide current commentary on the Indian framework. The judgment of the Bombay High Court in Nivritti Pandurang Nale versus Uttam Ganu Nale (2025), discussed in the LAWBAAZI article of December 2025, is the most recent significant judicial development in the Indian adoption law.

On Hindu maintenance law in Bangladesh, the International Journal of Research and Innovation in Social Science article on "The Development of Maintenance of Hindu Married Women" (October 2025) and the article on "Ensuring Maintenance of Hindu Woman: A Legal Study" (July 2025) provide the most current academic analysis. The BD Law Post analysis of rights and duties of maintenance in Hindu law (December 2024) and the Lawyers and Jurists article on changes needed in Hindu law in Bangladesh (April 2025) provide practitioner perspectives.

On the international human rights framework, the Convention on the Rights of the Child (ratified by Bangladesh in 1990), the Committee on the Rights of the Child's General Comment No. 14 (2013) on the best interests principle, and CEDAW and its Committee's general recommendations all provide the binding international framework for adoption and maintenance law reform.

On the Maintenance of Parents Act of 2013, the first ruling under the Act by the Senior Judicial Magistrate Court in Rangamati (involving Aleya Begum), noted in the October 2025 IJRISS article, documents the Act's practical application and significance.

On Nepal's National Civil Code of 2017 and its treatment of adoption, the official English translation available from the Nepal Law Commission provides the comparative framework. The academic analysis of the Code's implications for gender equality in personal law is available through the University of Melbourne Law School's South Asia Research series (2019 to 2024).

On the broader question of uniform adoption law in Bangladesh, the BLAST publication "Legislative Initiatives and Reforms in the Family Laws" provides the civil society perspective and the most comprehensive documentation of the current state of family law reform advocacy in Bangladesh.

The Fifth Part of this treatise will examine the Hindu law of guardianship and minority in Bangladesh: the rules governing who is entitled to be the guardian of a minor Hindu child, the rights and duties of Hindu guardians, the interaction between the Hindu personal law of guardianship and the secular Guardians and Wards Act of 1890, the special position of the mother as natural guardian and the constitutional challenges to the male preference rule, the welfare of the child as the paramount principle, the treatment of children of dissolved or de facto separated Hindu marriages, and the proposal for a Hindu Minority and Guardianship Act for Bangladesh modelled on the Indian Act of 1956.

PART FIVE

The Child, the Parent, and the State: Guardianship, Minority, and the Welfare Principle Under Hindu Law in Bangladesh

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FOREWORD TO PART FIVE

There is a particular kind of legal cruelty that does not announce itself as cruelty. It does not arrive with the force of an overt prohibition or an explicit exclusion. It arrives, instead, dressed in the language of tradition, in the vocabulary of ancient wisdom, in the quiet assurance that things have always been done this way and that the way things have always been done must carry some presumptive moral weight. It is this kind of cruelty that the Hindu law of guardianship inflicts on millions of mothers in Bangladesh every single day: not by telling them they are unworthy, not by announcing that they are lesser human beings, but by simply constructing a legal framework

in which the father is, as a matter of foundational legal principle, the natural guardian of his children, and the mother is, at best, a secondary figure who may step into a guardianship role only when the father is absent, incapacitated, or dead.

This is not a small matter. The question of who is legally recognized as the guardian of a child is not a technicality of family administration. It determines who can enroll a child in school, who can consent to a child's medical treatment, who can hold and manage a child's property, who can make the daily decisions that shape a child's life and future. In a society where the practical realities of domestic life often mean that the mother is the primary caregiver, the person who is physically present, emotionally invested, and practically responsible for a child's welfare, the legal subordination of the mother to the father in matters of guardianship is a systematic denial of reality: a legal fiction that diminishes women, disempowers mothers, and, most importantly, fails children by prioritizing the formal authority of one parent over the substantive welfare of the child.

Part Five of this treatise examines the Hindu law of guardianship and minority in Bangladesh in all its dimensions: the classical philosophical foundations that gave the father's guardianship its original justification; the colonial legal framework through which those classical rules were translated into enforceable law in British India and transmitted into the legal systems of both Pakistan and Bangladesh; the judicial interpretation of guardianship law in the courts of Bangladesh since independence in 1971; the constitutional challenges that the gender hierarchy embedded in guardianship law poses to the principles of equality and non-discrimination that the Constitution of Bangladesh upholds; the international human rights framework, particularly the Convention on the Rights of the Child, that imposes obligations on Bangladesh to govern guardianship according to the best interests of the child rather than the preferences of tradition; the comparative experience of India, Nepal, and other jurisdictions in reforming Hindu guardianship law; and the specific legislative reform that Bangladesh requires, modelled on but improving upon the Indian Hindu Minority and Guardianship Act of 1956, to bring its guardianship law into conformity with constitutional principle, international obligation, and the demands of justice.

The argument of this Part is straightforward but requires extended demonstration: that the Hindu law of guardianship as currently operative in Bangladesh is constitutionally indefensible, internationally non-compliant, practically harmful, and theoretically bankrupt; that the reform of this law is not merely desirable but legally required; and that the path of reform is illuminated by both the internal resources of Hindu jurisprudential philosophy, which has always recognized the welfare of the child as the ultimate purpose of guardianship, and the external resources of comparative law and international human rights, which have developed the best interests principle into a sophisticated and operationally rich framework for child-centered legal decision-making.

CHAPTER ONE: THE CONCEPT OF GUARDIANSHIP IN HINDU LAW: PHILOSOPHICAL FOUNDATIONS AND CLASSICAL DOCTRINE

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1.1 The Sanskrit Roots: Dharmartha and the Obligation of Care

The concept of guardianship in Hindu law is not, at its philosophical foundation, a concept about authority. It is a concept about obligation. The Sanskrit term most closely associated with what modern law calls guardianship is not a term that carries the connotation of power or control; it is a term that carries the connotation of protection and nurturance. The word pitri, or father, in Sanskrit carries with it a cluster of obligations toward the child that are understood as expressions of Dharma: the duty to protect the child's life, to provide for the child's education, to arrange the child's marriage appropriately, and to transmit to the child the cultural, spiritual, and material heritage of the family. These are not merely contractual obligations. They are, in the Hindu philosophical framework, dimensions of one's cosmic duty, one's role in the great chain of obligation and care that sustains both the family and the social order.

This foundational understanding of guardianship as obligation rather than authority is enormously important for the reform project, because it suggests that the reform of guardianship law need not be understood as a departure from the philosophical core of Hindu jurisprudence. If the purpose of guardianship, as understood within the Hindu tradition itself, is the welfare of the child, and if the legal framework that historically assigned primary guardianship to the father was justified by the assumption that this arrangement would best serve the child's welfare, then reform of that framework in cases where it demonstrably fails to serve the child's welfare is not a betrayal of Hindu values but an expression of them. The welfare of the child, shishu kalyan in Sanskrit, is the alpha and the omega of the guardianship institution. Everything else, including the specific allocation of guardianship between father and mother, is instrumental, contingent, and subject to revision when it fails to serve that ultimate purpose.

This argument from within the tradition is not merely rhetorical strategy. It reflects a genuine dimension of the Dharmasastra literature that is often overlooked by those who read the ancient texts primarily through the lens of their hierarchical and patriarchal provisions. The Manusmriti, for all its notorious statements about the subordination of women, is equally explicit about the obligations of parents toward children. Manu declares that the father must educate his children, provide for their needs, protect them from harm, and arrange their life circumstances in ways that enable them to fulfil their own Dharmic obligations. The child, in the Dharmasastra framework, is not a piece of property belonging to the father but a soul entrusted to the parents' care, a sacred responsibility that demands from both parents the fullest expression of their capacity for love, wisdom, and self-sacrifice.

The progressive legal reformer who invokes this dimension of the Dharmasastra tradition is not distorting or misrepresenting it. They are recovering a dimension of the tradition that has been overshadowed by the patriarchal allocation of formal guardianship authority, and they are insisting that the formal authority must be understood in light of the substantive purpose it is meant to serve. When formal authority fails substantive purpose, the reform of formal authority is demanded by the tradition itself.

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1.2 The Smriti on Guardianship: A Textual Survey

The classical Smriti literature addresses the question of guardianship, or what we might call parental authority over children, primarily in the context of three concerns: the management of a minor child's property, the arrangement of a child's marriage, and the performance of religious rites that require a male representative of the family. These three concerns were central to the ancient legal system, and the rules that emerged from them were shaped by the social structure of the time: a structure in which property was held by males and transmitted through male lineage, in which marriage was arranged by families rather than chosen by individuals, and in which religious obligation was conceived primarily as a male prerogative.

The Manusmriti is relatively sparse on the detailed rules of guardianship, but it establishes the foundational principle that the father is the primary authority over both the persons and the property of his minor children. The Yajnavalkyasmriti, a somewhat later text that is in many respects more practically oriented than Manu, elaborates on the duties of the father in relation to his children's property: the father must preserve and increase the child's property, must not dissipate it on his own behalf, and must hold it in trust for the child until the child reaches maturity. This trust concept embedded in the Smriti literature is philosophically significant: even in the most patriarchal reading of the ancient texts, the father's authority over a child's property is not conceived as absolute ownership but as fiduciary responsibility. The father is not the owner of the child's estate; he is its steward, accountable to the child for his stewardship.

The question of the mother's role in guardianship is addressed by different Smritis in different ways, and the variation is itself illuminating. The Manusmriti, predictably, envisions the mother primarily as a subordinate figure whose guardianship role is activated only in the father's absence. But other texts in the Smriti tradition are more nuanced. The Naradasmriti, for example, recognizes that the mother has her own direct relationship with her children that is not derivative of the father's authority, and that this relationship carries its own obligations of care and protection. The Arthasastra of Kautilya, which is not strictly a Dharmasastra text but provides invaluable evidence of ancient Indian legal practice, contains provisions that implicitly recognize the mother's practical role in managing household affairs, including the affairs relating to children, especially in the father's absence.

The digest literature, the Nibandhas, which were the working legal texts of the regional Hindu legal traditions, developed these Smriti provisions into more elaborate and practically applicable rules. The Dayabhaga of Jimutavahana, the foundational text of the Bengal school that governs Hindu Bangladeshis, addresses guardianship primarily in the context of the management of undivided family property. Jimutavahana's approach to guardianship is essentially property-centered: he is interested in guardianship primarily as a mechanism for managing the property interests of minor members of an undivided family, and his rules are designed to ensure that such property interests are protected rather than dissipated during the minority of the beneficiaries. This property-centered approach to guardianship has significant implications for the contemporary reform debate, because it suggests that even within the Dayabhaga school, the formal allocation of guardianship authority between father and mother was always intended to

serve a substantive purpose, namely the protection of children's interests, and was never conceived as an end in itself.

1.3 The Colonial Transformation: From Dharmasastra to Anglo-Hindu Law of Guardianship

The colonial encounter fundamentally transformed the Hindu law of guardianship, not by replacing its substance entirely but by translating it into a form that could be administered by English-trained judges applying common law methods to Hindu textual materials. This translation process introduced a series of distortions and simplifications that continue to shape the law today.

The most important of these distortions was the common law conceptualization of guardianship. English common law, drawing on its own patriarchal traditions, had developed a robust doctrine of paternal authority over children. The father was, at common law, the natural guardian of his legitimate children, with virtually absolute authority over their persons and property. This doctrine was deeply embedded in both English legal culture and the institutional practices of English courts. When British colonial judges encountered the question of guardianship in Hindu law, they naturally read the Hindu materials through the lens of this common law concept, emphasizing those elements of the Hindu tradition that corresponded to the English doctrine of paternal authority and downplaying those elements that did not fit.

The result was what Werner Menski, in his influential work on Hindu law in the South Asian context, has called the "textbook law" of Anglo-Hindu guardianship: a simplified, systematized, and paternal-authority-centered account of Hindu guardianship rules that reflected more the common law assumptions of colonial judges than the actual complexity and diversity of Hindu legal practice. Under this Anglo-Hindu textbook law, the father became, unambiguously and categorically, the natural guardian of his minor legitimate children, with the mother occupying a strictly secondary position that she could step into only upon the father's death or incapacity. The nuances of the Smriti tradition, the variations between different schools and regional practices, the recognition in some texts of the mother's independent guardianship role: all of this was flattened and subordinated to the simple hierarchy that colonial courts found administratively convenient.

The Guardians and Wards Act of 1890, enacted by the colonial legislature of British India, represents the culmination of this colonial transformation. This statute, which remains in force in Bangladesh today, established a general framework for court-appointed guardianship that applies to all religious communities in India, but it did so in a way that specifically preserved the personal law rules of each community regarding natural guardianship. Section 6 of the Act provides that the Act shall not take away or derogate from any power to appoint a guardian that is valid by the law to which the minor is subject. This provision meant that the Hindu personal law rules on natural guardianship, including the rule of paternal primacy, were preserved within the general statutory framework. The court's jurisdiction to appoint a guardian under the Act was thus intended to supplement, not to replace, the natural guardianship rules of Hindu personal law.

The practical consequence of this arrangement was that the question of who was the natural guardian of a Hindu minor in British India was answered, in the absence of a specific court order, by reference to the Anglo-Hindu textbook law of guardianship: the father first, and, upon the father's death or incapacity, the mother. This hierarchy was not explicitly enacted in any statute; it was embedded in the case law of the colonial courts, which had applied it consistently enough to give it the force of settled law.

1.4 The Rule of Paternal Primacy: Its Content and Implications

The rule of paternal primacy in Hindu guardianship law, as received into the legal systems of Bangladesh through the colonial inheritance, operates at several distinct levels, each of which requires examination.

At the most basic level, the rule establishes that the father is the natural guardian of his minor children with respect to both their persons and their property. This means that, as a matter of law and without any court order or legal proceeding, the father has the right and the duty to make decisions about every significant aspect of his minor children's lives: where they live, what education they receive, what medical care they obtain, what religion they practice, and how their property is held and managed. These are not trivial matters. The scope of natural guardianship encompasses the totality of a child's existence during the years of minority.

At the second level, the rule establishes that the mother's guardianship is derivative and conditional. Under classical Hindu law as received by the colonial courts, the mother is not recognized as a natural guardian at all in the same sense as the father. Her ability to exercise guardianship functions is contingent on the father's absence, death, or legal incapacity. In the father's lifetime, even if he is physically absent from the family home, even if he has abandoned the family, even if he is practically incapable of caring for the children due to illness or addiction or any other cause short of legal incapacity, the mother has no independent legal authority as guardian of her children. She may be their primary caregiver in every practical sense, but she lacks the legal authority to enroll them in school, consent to their medical procedures, or manage their property in her own name as their guardian.

At the third level, the rule empowers the father to appoint a guardian by will or other testamentary instrument, overriding even the mother's claim to guardianship after his death. The classical Hindu law, as received by the colonial courts, permitted the father to appoint a testamentary guardian, and the courts gave priority to such appointments even over the mother's natural claim. This means that a father could, in principle, entirely displace the mother from the guardianship of her own children after his death, preferring instead some other male relative or even an unrelated male as testamentary guardian. The mother's right to be the guardian of her children after the father's death was thus not a legal right at all, in the strict sense; it was merely a default position that applied in the absence of a specific testamentary appointment by the father.

The implications of this three-level rule of paternal primacy are profound and have been the subject of sustained critique by feminist legal scholars, human rights advocates, and constitutional lawyers in Bangladesh over the past three decades. At the most immediate level,

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the rule disadvantages mothers in a practical and concrete way: they cannot act legally on behalf of their children without either obtaining a court order or relying on the father's acquiescence. This is not merely inconvenient; in a legal system where court proceedings are expensive, time-consuming, and often inaccessible to the poor and the uneducated, the requirement that a mother obtain a court order to exercise guardianship functions that the father exercises as a matter of legal right represents a significant and unjustifiable burden.

At a deeper level, the rule embodies and reinforces a particular understanding of the family that is incompatible with the constitutional principles of equality and non-discrimination that Bangladesh has committed itself to upholding. It treats the father's relationship with his children as primary and the mother's relationship as secondary, not because fathers are in fact better guardians than mothers or because the welfare of children is better served by paternal authority than by maternal care, but because of the ancient social hierarchy between men and women that the rule embodies. This is, in the language of constitutional jurisprudence, discrimination on the ground of sex: a legal distinction based on a protected characteristic that has no rational justification in the stated purpose of the law, which is the welfare of the child.

CHAPTER TWO: THE GUARDIANS AND WARDS ACT OF 1890 AND ITS OPERATION IN BANGLADESH

2.1 The Statutory Framework: An Overview

The Guardians and Wards Act of 1890 is the primary legislation governing court-appointed guardianship in Bangladesh. It is a statute of colonial vintage, enacted by the Imperial Legislative Council of British India and transmitted, through the legal inheritance of Pakistan and then Bangladesh, into the contemporary legal system of the People's Republic. It has been amended modestly since the colonial period but its essential structure and philosophy remain unchanged. It is, in important respects, an admirable piece of Victorian legal draftsmanship: clear in its structure, comprehensive in its coverage of the court-appointment process, and explicitly committed to the welfare of the child as the ultimate criterion for judicial decision-making. But it is also a statute that is fundamentally incomplete as a framework for governing Hindu guardianship in Bangladesh, because it does not address the question of natural guardianship and explicitly defers to personal law on this question, leaving the Hindu personal law rules, with all their gender hierarchy, unreformed.

The Act defines a guardian as a person having the care of the person of a minor or of his property or of both his person and his property. This definition is important because it distinguishes between guardianship of the person, which concerns the physical care, education, and upbringing of the child, and guardianship of property, which concerns the management of the child's estate. These two forms of guardianship may, in principle, be held by different persons, though in practice the court usually appoints the same person as guardian of both person and property.

Section 7 of the Act is its most important provision. It empowers the court to appoint a guardian of a minor where it is satisfied that it is for the welfare of the minor that such an order should be made. The welfare of the minor is thus the paramount criterion for court appointment of a guardian. This welfare principle is not merely a guiding consideration; it is the overriding principle that must govern every exercise of the court's jurisdiction under the Act. A court cannot lawfully appoint as guardian a person whose appointment would not serve the welfare of the minor, regardless of any other consideration, including the personal law rules on natural guardianship.

But the crucial qualification to this welfare principle is contained in Section 6, which provides that the Act shall not be construed to take away or derogate from any power to appoint a guardian that is valid by the law to which the minor is subject. This provision is the statutory recognition of the personal law of natural guardianship. It means that when a father is alive and functioning as the natural guardian of his Hindu children, the court has no general jurisdiction to appoint another person as guardian in his place, unless the father's conduct or circumstances are such that his continuation as guardian would be contrary to the welfare of the minor. The natural guardianship rules of Hindu personal law thus operate as a presumptive entitlement: the father is presumed to be the appropriate guardian, and only evidence of concrete harm to the child's welfare can displace that presumption.

This interaction between the statutory welfare principle of Section 7 and the personal law preservation provision of Section 6 has been the subject of considerable litigation in the courts of Bangladesh and, before independence, in the courts of British India and Pakistan. The essential question that the courts have had to address is: when does the welfare of the minor justify displacing the natural guardian designated by personal law? The answer to this question has evolved over time and has been the subject of both consistent judicial development and occasional inconsistency.

2.2 Judicial Interpretation in Bangladesh: The Courts' Struggle with the Welfare Principle

The courts of Bangladesh, like their predecessors in British India and Pakistan, have consistently affirmed that the welfare of the minor is the paramount consideration in guardianship proceedings. In the often-cited case of Md. Abu Bakar Siddique v. S.M.A. Bakar, the Appellate Division of the Supreme Court of Bangladesh held that in guardianship proceedings under the Act, the court must be satisfied that the welfare of the minor requires the appointment of a particular person as guardian. This affirmation of the welfare principle is welcome and consistent with the statutory text. But its practical application in cases involving Hindu families has been complicated by the interaction with the natural guardianship rules of Hindu personal law.

The most significant constitutional development in Bangladesh's guardianship jurisprudence in recent years has been the High Court Division's ruling that mothers can be the sole guardian of their children. This ruling, referenced by academic commentators including in the compilation published by the Bangladesh Hindu Law Reform Council, represented a significant departure from the traditional position that the father's authority as natural guardian could only be displaced in the most extreme circumstances. The court's reasoning, though developed primarily

in the context of Muslim personal law, has implications for Hindu guardianship as well, because it grounds the mother's guardianship claim in constitutional rights, specifically the right to equality under Article 27 of the Constitution, rather than merely in the personal law rules that have traditionally subordinated her.

This constitutional grounding of the guardianship claim is enormously significant for the reform project. If the right to be recognized as the natural guardian of one's children is a constitutional right, and if the law's denial of that right to mothers on the basis of their sex constitutes unconstitutional discrimination, then the reform of Hindu guardianship law is not merely a matter of legislative choice but of constitutional obligation. The state is not merely permitted to reform the law; it is required to do so.

The courts of Bangladesh have also grappled with the question of what constitutes sufficient evidence of harm to the child's welfare to displace the father's natural guardianship. The case law suggests that courts have required fairly serious evidence of misconduct or incapacity on the part of the father before they will displace him: simple domestic unhappiness, disagreements between parents about child-rearing, or the mother's superior economic circumstances have generally not been found sufficient. This high threshold for displacing the father is itself a reflection of the ideology of paternal primacy embedded in the natural guardianship rules: even within the statutory framework that is ostensibly governed by the welfare principle, the courts have treated the father's primacy as a strong presumption that is difficult to rebut.

This judicial conservatism is understandable in historical context but is increasingly difficult to justify in the light of the constitutional and international human rights framework within which guardianship law must now be understood. A threshold that is so high that it effectively privileges the father's formal authority over the child's substantive welfare is not consistent with a welfare-centered understanding of guardianship law. The reform of judicial practice in this area requires not merely legislative amendment but a sustained effort at judicial education and professional development: judges must be helped to understand that the welfare principle, properly applied, requires active inquiry into what arrangement will best serve the child's interests, not merely passive deference to the formal allocation of guardianship authority in the personal law.

2.3 The Problem of Forum Shopping and Jurisdictional Confusion

One of the least-discussed but practically most significant problems in the administration of Hindu guardianship law in Bangladesh is the problem of jurisdictional confusion and forum shopping. Bangladesh operates, for family law matters, a system of plural jurisdiction in which the Family Courts established under the Family Courts Ordinance of 1985 exercise jurisdiction over certain categories of family matters, while the civil courts of general jurisdiction exercise jurisdiction over others, including guardianship proceedings under the Guardians and Wards Act of 1890. The division of jurisdiction between these two court systems is not always clear in practice, and this lack of clarity creates opportunities for strategic behavior by parties who may choose to initiate proceedings in whichever forum they believe will be most favorable to their position.

In the context of Hindu guardianship disputes, this forum shopping problem is compounded by the fact that there is no specialized family court with specific expertise in Hindu personal law. The Family Courts in Bangladesh were designed primarily with Muslim family law in mind, as this is the system with which the vast majority of their cases are concerned. Judges in these courts may have limited familiarity with the specific rules and precedents of Hindu personal law, and litigants, particularly those who are poor or poorly educated, may not have access to lawyers with the specialized expertise needed to navigate the intersection of Hindu personal law and the Guardians and Wards Act.

The result is a system in which the outcome of a Hindu guardianship dispute may depend as much on which court is chosen, which judge happens to be assigned, and which party can afford better legal representation as it does on the merits of the case and the genuine interests of the child. This is a profound failure of the rule of law, and it is a failure that disproportionately affects women, who are on average less able to afford sophisticated legal representation and less familiar with the strategic possibilities of forum shopping than their male counterparts.

The reform of guardianship law must therefore address not only the substantive rules but also the institutional infrastructure for their administration. Specialized family courts with genuine expertise in minority personal law, including Hindu personal law, are a necessary component of any effective reform program. Without institutional reform, even the best-designed substantive rules will be unevenly and unreliably applied.

CHAPTER THREE: THE MOTHER'S POSITION: CONSTITUTIONAL CHALLENGES AND THE EQUALITY IMPERATIVE

3.1 Article 27 and the Equality Principle

The Constitution of Bangladesh, adopted in 1972 and reflecting the founding ideals of the liberation struggle, contains a robust set of provisions on equality and non-discrimination. Article 27 declares, in terms of exemplary clarity, that all citizens are equal before law and are entitled to equal protection of law. Article 28(1) provides that the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, or place of birth. Article 28(2) specifically addresses the position of women: women shall have equal rights with men in all spheres of the State and of public life. Article 28(4) permits the state to make special provision in favour of women or children, which is an acknowledgment that formal equality is not always sufficient and that substantive equality may require targeted measures.

These constitutional provisions create a powerful framework for challenging the gender hierarchy embedded in the Hindu law of guardianship. The question of whether a person is legally recognized as the natural guardian of their own children is unquestionably a matter of fundamental importance to their life, identity, and dignity. The law's differential treatment of mothers and fathers in this matter, its recognition of the father as natural guardian while

relegating the mother to a secondary position, is precisely the kind of discrimination on the ground of sex that Article 28(1) prohibits.

The counter-argument, that the personal law of a religious community is exempt from constitutional scrutiny because religious law represents a community's right to govern itself according to its own traditions, has been made in various forms in Bangladesh and the broader South Asian context. It is an argument that deserves serious engagement rather than mere dismissal, because it raises genuine questions about the relationship between state authority and religious community self-governance that are among the most difficult in constitutional theory. But it is ultimately an argument that fails, for several reasons that will be developed in Part Fifteen of this treatise, which addresses the constitutional framework directly. For present purposes, the essential point is that constitutional rights are rights against the state, and when the state enforces through its courts and its legal system a body of personal law that discriminates against women on the ground of sex, the state is participating in and perpetuating that discrimination in a way that is not exempt from constitutional scrutiny.

The High Court Division of Bangladesh has in recent years shown increasing willingness to apply constitutional principles to questions of personal law. The ruling that mothers can be sole guardians of their children, discussed in the previous chapter, represents precisely this kind of constitutional engagement with personal law. It demonstrates that the courts are capable of moving beyond simple deference to personal law tradition and engaging with the deeper question of whether that tradition, as applied in the contemporary constitutional context, is consistent with the fundamental rights guarantees of the Constitution.

3.2 CEDAW and Bangladesh's International Obligations

Bangladesh ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1984, with certain reservations on provisions that the government considered incompatible with Sharia law. But the reservations entered by Bangladesh do not extend to Hindu personal law, and the provisions of CEDAW are therefore fully applicable to the question of Hindu women's guardianship rights.

CEDAW Article 16 is the most directly relevant provision. It requires that states parties ensure the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children. The expression the same rights and responsibilities as parents is unambiguous: mothers and fathers must have equal legal standing as parents and guardians of their children. A law that recognizes the father as natural guardian and relegates the mother to a secondary position is directly inconsistent with this requirement.

The CEDAW Committee, in its review of Bangladesh's compliance with the Convention, has consistently identified the discriminatory provisions of Hindu personal law as a matter of concern. In its Concluding Observations on Bangladesh's combined eighth periodic report, the Committee expressed concern about the persistence of discriminatory laws governing Hindu women, including in the area of guardianship, and recommended that Bangladesh amend these laws to bring them into conformity with CEDAW. These Concluding Observations do not have

the formal legal force of binding treaty provisions, but they constitute authoritative interpretations of what CEDAW requires from Bangladesh, and their consistent message that Hindu guardianship law must be reformed is a significant element of the international pressure for change.

The argument that Bangladesh's obligations under CEDAW require the reform of Hindu guardianship law is not merely a technical legal argument. It connects to a broader jurisprudential debate about the relationship between international human rights law and domestic personal law, a debate that has been at the center of feminist legal theory and postcolonial jurisprudence for the past three decades. The essential question is whether international human rights norms, which are framed in universal terms and are committed to the equal dignity and rights of all persons, can and should override community-specific personal law rules that are grounded in religious tradition and that many members of the relevant communities endorse.

The dominant answer in contemporary international human rights jurisprudence is yes, they can and should, but the process of reform must be respectful of community autonomy and must engage with communities themselves rather than simply imposing change from above. This answer is reflected in the General Recommendation No. 29 of the CEDAW Committee on Article 16 of CEDAW, which addresses family-related economic consequences of marriage, family relations, and their dissolution. The General Recommendation emphasizes that states must ensure that personal status laws, whether based on religion, custom, or other sources, comply with the principles of CEDAW, and that communities' rights to maintain cultural practices are always subordinate to individuals' rights to non-discrimination.

3.3 The Child's Perspective: CRC Article 12 and Participatory Guardianship

The Convention on the Rights of the Child, ratified by Bangladesh in 1990, introduces a dimension to the guardianship question that is distinct from but related to the equality question that CEDAW addresses. While CEDAW focuses on the rights of women as potential guardians, the CRC focuses on the rights of children as the subjects of guardianship. And what the CRC says, with particular clarity in Article 12, is that children who are capable of forming their own views have the right to express those views freely in all matters affecting them, with those views being given due weight in accordance with the child's age and maturity.

Article 12 of the CRC is, in the context of guardianship law, a radical provision. The classical Hindu law of guardianship, like virtually all historical legal systems, conceived of the child as the object of guardianship rather than as its subject: the child was the person on whose behalf decisions were made, not the person who participated in making them. The father was the decision-maker; the child's role was to benefit from, or suffer under, those decisions. Article 12 challenges this conception at its root. It insists that children are persons with their own views, preferences, and interests, and that their voices must be heard in legal proceedings that affect them.

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The practical implications of this principle for guardianship proceedings are significant. A court determining who should be the guardian of a child old enough to form and express views must take those views into account. If a child of, say, twelve years of age expresses a clear preference for living with their mother rather than their father, this preference is not legally irrelevant: it is a factor that the court must weigh, alongside other factors relevant to the child's welfare, in making its decision. A legal system that categorically excludes the child's own voice from guardianship proceedings is inconsistent with Article 12.

The current law and practice of guardianship in Bangladesh, for Hindu families as for others, is largely silent on the question of the child's own voice. The Guardians and Wards Act of 1890 does not contain any provision requiring courts to ascertain and consider the views of minor children in guardianship proceedings. The theoretical welfare principle of Section 7, while it encompasses the child's own perspective as one relevant factor, provides no procedural mechanism for ensuring that perspective is actually obtained and considered. This is a gap that legislative reform must address.

A reformed Hindu Minority and Guardianship Act for Bangladesh should include explicit provisions requiring courts to ascertain the views of children who are old enough and mature enough to form them, to consider those views as one of the factors relevant to the child's welfare, and to give reasons if they decide to override the child's expressed preference. This is not merely a matter of legal compliance with CRC obligations; it is a matter of treating children with the dignity and respect to which they are entitled as persons.

CHAPTER FOUR: THE NATURAL GUARDIAN IN DAYABHAGA LAW: A DEEP DOCTRINAL EXAMINATION

4.1 The Dayabhaga Conception of the Family and Its Implications for Guardianship

The Dayabhaga school of Hindu law, which governs Hindu Bengalis and hence Hindu Bangladeshis, has a distinctive understanding of the family that differs in important ways from the Mitakshara school that predominates elsewhere in India. These differences have significant implications for the law of guardianship.

The most fundamental difference is in the conception of the joint family and its property. Under the Mitakshara system, the joint family property is conceived as belonging to the entire body of male coparceners as a unit: each coparcener has an undivided share in the property by virtue of his birth into the family, and this share is not alienable by him individually without the consent of the other coparceners. The Mitakshara system thus creates a strong structural connection between individual family members and the family property, and this connection has implications for guardianship: the guardian of a minor coparcener is managing not merely the child's separate property but the child's undivided share in a collectively owned estate that belongs to all the male members of the family.

The Dayabhaga system, by contrast, does not recognize the concept of undivided coparcenary ownership in this form. Under Dayabhaga, the property of a deceased person passes to his heirs at the moment of death, and each heir takes an individually owned share rather than an undivided share in a collective estate. The Dayabhaga family, in other words, is not conceived as a collective property-holding unit in the same way as the Mitakshara family; it is conceived as a collection of individuals whose property relationships are structured by the rules of inheritance rather than by the concept of collective coparcenary ownership.

This difference has important implications for guardianship law in the Dayabhaga context. Under Mitakshara law, the management of a minor coparcener's property was closely connected to the management of the joint family property as a whole, and the Karta, or managing member of the family, exercised significant authority over the property of minor family members. Under Dayabhaga law, the property that passes to a minor on the death of a parent is the minor's own individually owned property, not an undivided share in a collective estate. The guardian of a minor under Dayabhaga law is therefore managing the minor's individual property, not a share in a collectively owned family estate, and this changes the character of the guardianship obligation in important respects.

In particular, the Dayabhaga conception of guardianship property is more clearly fiduciary in character than the Mitakshara conception. The Dayabhaga guardian is managing property that belongs, individually and unambiguously, to the minor. There is no competing claim from a family collective; the property is the minor's alone, and the guardian's obligation is purely to manage it prudently for the minor's benefit. This strong fiduciary character of Dayabhaga guardianship suggests that the reform of Hindu guardianship law in Bangladesh should emphasize the accountability of guardians to the wards they serve, and should provide robust mechanisms for court supervision of guardians' management of minor children's property.

4.2 The Question of the Karta in Hindu Bangladesh

The concept of the Karta, the managing member of the undivided Hindu family who exercises day-to-day authority over family affairs, is a concept that derives primarily from the Mitakshara tradition and that has a more attenuated application in the Dayabhaga system. Nevertheless, the figure of the Karta remains relevant in the context of Hindu family life in Bangladesh, because many Hindu families in Bangladesh continue to live in joint family arrangements, even if the property law governing them is technically Dayabhaga rather than Mitakshara.

The Karta is not, technically, the guardian of the minor members of the family in the formal legal sense of the Guardians and Wards Act. But he exercises, in practice, many of the functions that legal guardians exercise: he makes decisions about the family's living arrangements, manages the family's economic affairs, represents the family in dealings with outsiders, and exercises practical authority over the conduct and activities of the family members, including its minor members. The practical authority of the Karta thus supplements, and in some contexts effectively displaces, the formal legal authority of the father as natural guardian.

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The legal status of the Karta in relation to minor family members is a question that has received inadequate attention from both academic lawyers and courts in Bangladesh. The existing law, combining the Dayabhaga rules on joint family management with the Guardians and Wards Act, does not clearly address the extent to which the Karta may act on behalf of minor family members without the formal appointment of a guardian under the Act. This gap creates practical uncertainty and potential for abuse: a Karta who exercises authority over a minor's property without a formal guardianship order is not subject to the court's supervision mechanisms, and the minor may therefore be without effective protection against mismanagement or self-dealing by the Karta.

Legislative reform should address this gap by clearly defining the legal status of the Karta in relation to minor family members and by extending the court's supervision mechanisms to cover the exercise of Karta authority over minors' property. This will require careful drafting that is sensitive to the specific features of the Dayabhaga joint family, but it is an essential component of a comprehensive reform of Hindu guardianship law in Bangladesh.

4.3 Testamentary Guardianship and Its Challenges

The Hindu law, as received by the colonial courts, recognized the father's power to appoint a guardian of his minor children by will or other testamentary instrument. This power of testamentary appointment was significant in practice because it allowed the father to designate someone other than the mother as guardian of the children after his death. The colonial courts treated such testamentary appointments with considerable deference, giving priority to the father's designated guardian over the mother's natural claim even in cases where the designated guardian was a less appropriate carer for the children.

This doctrine of testamentary guardianship has, in the contemporary constitutional context, become deeply problematic. If the mother has a constitutional right to equal treatment as a parent, and if the natural guardianship rules must be reformed to give effect to that constitutional right, it would be inconsistent to allow the father to override the mother's reformed rights through a testamentary appointment. The power of testamentary guardianship must therefore be reconsidered as part of any comprehensive reform of Hindu guardianship law.

The reform question here is not whether the father should be able to appoint a testamentary guardian at all, but rather what the legal effect of such an appointment should be in relation to the surviving mother's rights. The Indian Hindu Minority and Guardianship Act of 1956, which represents the most developed statutory framework for Hindu guardianship in the region, addresses this question by providing that the father may appoint a testamentary guardian but that the testamentary guardian's authority shall not take effect if the mother survives the father and is not disqualified from being the guardian. This provision ensures that the father's testamentary appointment does not override the mother's natural guardianship rights, while still allowing the father to designate a guardian for cases where the mother may be genuinely unsuitable or unavailable.

A reformed Hindu guardianship law for Bangladesh should incorporate a similar provision, or indeed a stronger one: the mother's right as natural guardian should take precedence over any testamentary appointment by the father, and the testamentary appointment should take effect only if the mother has died, is legally disqualified, or has herself agreed to the appointment.

CHAPTER FIVE: THE WELFARE OF THE CHILD AS THE PARAMOUNT PRINCIPLE

5.1 The Theoretical Foundations of the Best Interests Principle

The principle that the welfare of the child is the paramount consideration in all decisions concerning children is today one of the most widely accepted principles of family law across the world. It is enshrined in Article 3(1) of the CRC, which provides that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. Article 3(1) declares the best interests principle to be applicable not merely in court proceedings but in all actions concerning children, which gives it a scope that extends beyond legal proceedings to encompass administrative and even private decisions.

The philosophical foundations of the best interests principle connect to several different theoretical traditions. From the perspective of liberal political philosophy, the best interests principle reflects the commitment to protecting the autonomy of persons who are not yet fully capable of autonomous decision-making: because children cannot fully represent and pursue their own interests, the law must provide a mechanism for ensuring that decisions made on their behalf genuinely serve those interests rather than merely the interests of the adults who exercise authority over them. From the perspective of relational ethics, particularly the care ethics tradition developed by Carol Gilligan, Nel Noddings, and their successors, the best interests principle reflects the ethical primacy of care relationships and the obligations that arise from those relationships: adults who stand in caring relationships with children have obligations to those children that are not merely contractual or conventional but are constitutive of the relationship itself. From the perspective of rights theory, the best interests principle reflects the recognition that children are bearers of rights in their own right, not merely objects of adult authority, and that those rights include the right to have decisions made on their behalf by those who are genuinely committed to their welfare.

These different philosophical traditions converge on a common conclusion: that the welfare of the child is the appropriate criterion for determining who should exercise guardianship and how that guardianship should be exercised. They diverge, however, on questions of how the child's welfare is to be determined, what weight to give to the child's own preferences, and how to balance short-term and long-term interests. These are questions that do not admit of simple theoretical resolution and that require, in practice, the exercise of contextually sensitive judgment by decision-makers with appropriate expertise and appropriate information.

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5.2 Operationalizing the Best Interests Principle in the Hindu Context

The translation of the best interests principle from abstract theory to concrete legal practice is always challenging, but it is particularly challenging in the context of Hindu guardianship law in Bangladesh because of the plural normative framework within which that law operates. A court applying the best interests principle to a Hindu guardianship case must navigate between the principle's demands and the cultural context in which the child's welfare is to be assessed, a context in which family structure, gender roles, religious practice, caste identity, and community belonging all contribute to what it means for a child to flourish.

This cultural context does not override the best interests principle; it informs its application. The welfare of a Hindu child in Bangladesh cannot be assessed in abstraction from the cultural and social context in which that child lives. A determination of what custody or guardianship arrangement serves the child's best interests must take into account not merely the immediate material welfare of the child but also the child's identity, relationships, community membership, and long-term flourishing as a member of a specific cultural and religious community. This is not a conservative argument for preserving traditional guardianship arrangements in the face of the best interests principle; it is an argument for a contextually sensitive application of the best interests principle that takes seriously the full range of factors relevant to a child's welfare.

Werner Menski's concept of living law, which emphasizes the gap between formal legal texts and the actual normative practices of communities, is relevant here. The best interests principle, applied in the Hindu guardianship context in Bangladesh, must engage with the living law of Hindu family life, the actual practices, expectations, and values that govern the way Hindu families care for their children, rather than merely with the formal rules of either the Dharmasastra tradition or the colonial legal system. This engagement with living law will sometimes reveal that the formal legal rules fail to capture what actually serves children well in the community context; and in such cases, reform of the formal legal rules to better reflect the community's own best practices is both legally justified and practically beneficial.

5.3 The Welfare Principle and the Rights of Children with Disabilities

One dimension of the best interests principle that has received inadequate attention in the context of Hindu guardianship law in Bangladesh is its application to children with disabilities. The Convention on the Rights of Persons with Disabilities, ratified by Bangladesh in 2007, requires that states parties ensure that persons with disabilities have access, on an equal basis with others, to the full range of legal proceedings, including guardianship proceedings. It also requires that legal systems provide appropriate accommodation for the participation of persons with disabilities in legal proceedings concerning them.

In the context of Hindu guardianship law, this requirement means that children with disabilities have the same right as other children to have guardianship decisions made on the basis of their individual welfare, and that their disabilities, while relevant to the assessment of their welfare needs, cannot be used as a basis for denying them the procedural rights that other children enjoy. A child with a severe cognitive disability may require more intensive supervision and support

than a neurotypical child, but this is an argument for more robust judicial oversight of the guardianship arrangement, not for less procedural protection for the child.

The existing Hindu personal law of guardianship, like most historical legal systems, does not contain any specific provisions addressing the guardianship of children with disabilities. This gap must be addressed in any comprehensive reform: a reformed Hindu Minority and Guardianship Act should include specific provisions addressing the assessment of welfare for children with different types of disabilities, the duty of guardians to facilitate the maximum possible participation of children with disabilities in decisions affecting them, and the court's supervisory jurisdiction over guardianship arrangements that involve children with particularly complex needs.

CHAPTER SIX: INDIA'S HINDU MINORITY AND GUARDIANSHIP ACT OF 1956: A COMPARATIVE ANALYSIS AND ITS LESSONS FOR BANGLADESH

6.1 The Historical Context of the 1956 Act

The Hindu Minority and Guardianship Act of 1956 was enacted by the Indian Parliament as part of the wider Hindu Code reform programme that had been championed by Dr. B.R. Ambedkar and Prime Minister Jawaharlal Nehru since the early years of independence. It was one of four statutes that together transformed Hindu personal law in India from an uncodified system based on ancient texts and colonial judicial decisions into a modern, statutory framework. The guardianship Act was perhaps the least controversial of the four, because the principle of child welfare was already well-established in the common law tradition that had informed the colonial Guardians and Wards Act, and because the specific reforms of the 1956 Act, while significant, were less dramatic than the changes to inheritance and marriage law effected by the other three statutes.

The 1956 Act introduced three major changes to the existing law of Hindu guardianship in India. First, it codified the rules of natural guardianship and established that both the father and the mother are natural guardians of a minor child, with the father's guardianship taking precedence during his lifetime but the mother's guardianship fully effective after the father's death without any requirement for court appointment. Second, it restricted the father's power of testamentary guardianship by providing that a testamentary guardian's authority would not take effect if the mother survived the father and was not disqualified from acting as guardian. Third, it explicitly established the welfare of the minor as the paramount consideration governing all exercises of guardianship authority, both by natural guardians and by court-appointed guardians.

These reforms were significant but not radical. The 1956 Act did not abolish the hierarchy between the father and the mother as natural guardians; it merely moderated it. The father remained the primary natural guardian during his lifetime, and the mother's guardianship during the father's lifetime was not explicitly recognized as a co-equal status. The Act also did not fully

address the question of the child's own voice in guardianship proceedings, leaving this to be developed through judicial interpretation under the welfare principle.

6.2 Subsequent Developments in Indian Guardianship Law

In the decades since the enactment of the 1956 Act, Indian courts have progressively developed the welfare principle in ways that have moderated the formal hierarchy between father and mother, though they have not entirely abandoned it. The Supreme Court of India, in a series of significant decisions, has held that the welfare of the minor is not merely a relevant consideration but the paramount consideration in guardianship proceedings, and that the court must conduct an independent inquiry into what arrangement will best serve the child's interests rather than simply deferring to the formal rules of natural guardianship.

The significant case of Githa Hariharan v. Reserve Bank of India (1999) represents a landmark in this evolution. In that case, the Supreme Court was asked whether a mother could act as the natural guardian of her minor child for the purposes of opening a bank account and investing money on the child's behalf, when the father was alive but had in practice delegated this responsibility to the mother. The court held that the expression "after him" in Section 6 of the Hindu Minority and Guardianship Act, which referred to the mother's guardianship coming into effect after the father, should be read to mean not merely after the father's death but also when the father was absent or unable to act, interpreting the provision expansively in light of the constitutional guarantee of equality and the welfare principle. This interpretation effectively gave the mother co-equal practical guardianship rights with the father in cases where the father was not actively exercising his guardianship functions, even if he was alive.

The Githa Hariharan decision was controversial and was criticized by some scholars as a creative but potentially unstable reading of the statutory text. But its constitutional logic was sound: a reading of the statute that systematically excluded the mother from guardianship functions even when she was the actual primary caregiver of the child was difficult to reconcile with the equality guarantee of the Indian Constitution. The court's interpretive move, though imperfect, was a necessary accommodation of constitutional principle within the constraints of the existing statutory text.

Bangladesh does not yet have a statute equivalent to the Indian 1956 Act, and there is therefore no statutory text of this kind for Bangladeshi courts to interpret expansively. But the constitutional logic of the Githa Hariharan decision is fully applicable in Bangladesh: a natural guardianship law that systematically denies the mother equal legal status as guardian, even when she is the primary caregiver of her children, is difficult to reconcile with the equality provisions of the Bangladesh Constitution. Bangladeshi courts could, in principle, reach a similar result to the Indian Supreme Court through constitutional interpretation of the Guardians and Wards Act, giving the welfare principle and the constitutional equality guarantee priority over the personal law rules of paternal primacy.

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6.3 Nepal's National Civil Code of 2017: A Different Approach

Nepal's National Civil Code of 2017 represents a different and in some respects more radical approach to the reform of guardianship law in the South Asian Hindu context. Unlike India's 1956 Act, which preserved a modified form of the hierarchy between father and mother as natural guardians, Nepal's 2017 Code establishes full formal equality between parents as guardians of their children. Both parents are recognized as equally the natural guardians of their minor children, and neither parent's guardianship authority takes precedence over the other's except in cases where a court determines that one parent is unsuitable.

Nepal's 2017 Code also takes a more explicitly rights-based approach to guardianship, grounding the guardian's authority not in the Hindu theological concept of parental duty but in the child's own rights under the CRC and the Nepalese Constitution. This rights-based framing is significant because it reorients the conceptual foundation of guardianship from parental authority to child welfare: the guardian's authority is derived from and limited by the child's rights, not from the guardian's own natural or theological entitlement.

The Nepal model has been criticized by some scholars who argue that its formal equality approach, while admirably consistent with constitutional principle, does not adequately address the practical realities of guardianship in a society where gender inequality is deeply embedded in social structures and cultural norms. The argument is that formal legal equality between parents as guardians may not translate into substantive equality in practice if the social context continues to favor the father's exercise of guardianship authority. This is a legitimate concern, but it is an argument for supplementing formal equality with specific provisions addressing practical barriers to mothers' effective exercise of guardianship rights, not for abandoning the formal equality commitment.

For Bangladesh, the Nepal model provides an attractive template for the formal structure of a reformed Hindu guardianship law: full legal equality between parents as natural guardians, with the child's welfare as the paramount criterion for resolving disputes. The challenge is to build on this formal foundation with specific provisions that address the practical barriers to equal guardianship in the Bangladeshi social context, including barriers related to economic inequality, institutional bias, and cultural norms that continue to favor paternal authority even in the face of legal reform.

CHAPTER SEVEN: CASTE AND GUARDIANSHIP: A NEGLECTED INTERSECTION

7.1 The Impact of Caste on Guardianship Practices

The intersection of caste and guardianship in Hindu family law is one of the most neglected dimensions of the reform debate, and it is particularly neglected in the context of Hindu Bangladesh, where the broader caste discrimination question has received less sustained scholarly attention than it deserves. The argument of this chapter is that caste operates as a

significant and legally underexamined variable in the administration of guardianship law, and that any comprehensive reform of Hindu guardianship law in Bangladesh must address the caste dimension explicitly.

The connection between caste and guardianship operates at several distinct levels. At the most basic level, caste shapes the social and economic context within which guardianship disputes arise. Hindu families in Bangladesh are not a homogeneous community; they are divided by caste into groups with very different levels of social privilege, economic resources, and access to formal legal processes. A high-caste Hindu family in Dhaka has access to legal resources, professional networks, and institutional connections that a low-caste Hindu family in a rural district of Sylhet simply does not have. The guardianship law, however well-designed in principle, will be experienced very differently by these two families, and the outcomes of guardianship disputes will be shaped not only by the merits of each party's case but by these background inequalities.

At a deeper level, caste shapes the normative framework within which guardianship decisions are made within Hindu communities. The classical Hindu guardianship rules were not uniform across castes; they varied in their application, with different castes having different practices regarding the management of children's property, the arrangements for children's marriages, and the exercise of parental authority. The colonial codification of Hindu law into a single, uniform system obliterated much of this caste-based variation, imposing a high-caste Brahmin normative framework on communities whose actual practices were often significantly different.

Contemporary anthropological research on Hindu communities in Bangladesh, such as that collected in the volumes edited by Rafiuddin Ahmed and Shapan Adnan on social change in Bangladesh, documents the persistence of caste-differentiated family practices that continue to shape the actual exercise of parental authority over children. In lower-caste communities where women have historically had greater practical autonomy than in higher-caste communities, the formal legal rule of paternal primacy in guardianship is often experienced as a foreign imposition that does not reflect the community's own practices. Reform advocates who engage with these communities must be sensitive to this dimension and must design reform proposals that accommodate the diversity of Hindu family practices rather than simply imposing a new, formally egalitarian framework that may be as distorting as the old patriarchal one.

7.2 The Guardianship of Dalit Children: Structural Vulnerability and Legal Neglect

The situation of Dalit children within Hindu Bangladesh deserves particular attention in any discussion of guardianship law. Dalit communities, those whose ancestors occupied the lowest positions in the caste hierarchy, face multiple, intersecting forms of disadvantage that create distinctive guardianship-related vulnerabilities for their children.

Economic vulnerability is the most immediately apparent. Dalit families in Bangladesh are, on average, significantly poorer than upper-caste Hindu families, and they are often engaged in traditionally Dalit occupations, such as sweeping, tanning, and sanitation work, that are stigmatized and poorly remunerated. The parents of Dalit children are often unable to provide the

educational resources, healthcare access, and material security that children need to thrive, and the children are therefore at greater risk of being placed under the informal guardianship of employers, labor contractors, or other powerful individuals whose interests may not align with the children's welfare.

The formal law of guardianship does little to address these structural vulnerabilities. The Guardians and Wards Act provides for court-appointed guardianship when parents are unable to care for their children, but this provision is largely inaccessible to Dalit families who cannot afford the cost of legal proceedings and who may not trust courts whose personnel are predominantly from higher-caste backgrounds. The result is that Dalit children in vulnerable situations often fall outside the protective mechanisms of formal guardianship law entirely, governed instead by informal arrangements that lack legal sanction and legal accountability.

A reformed Hindu Minority and Guardianship Act for Bangladesh should address the specific vulnerabilities of Dalit children through several mechanisms: access to free legal aid in guardianship proceedings, the appointment of child welfare officers with specific responsibility for monitoring the welfare of children in vulnerable situations, including Dalit children; and provisions enabling civil society organizations with expertise in Dalit rights to bring applications to the court on behalf of Dalit children whose welfare is at risk. These provisions would not merely improve the law on paper; they would make it accessible and effective for communities that the current system largely ignores.

CHAPTER EIGHT: GUARDIANSHIP IN THE CONTEXT OF PARENTAL SEPARATION AND DE FACTO MARRIAGE DISSOLUTION

8.1 The Peculiar Problem of Hindu Marriage in Bangladesh

The Hindu law of marriage in Bangladesh, as examined in the earlier parts of this treatise, does not provide for divorce. The absence of divorce in Hindu personal law as operative in Bangladesh creates a peculiar and practically important problem for guardianship law: what happens to the children of a Hindu marriage when the parents separate de facto, that is, when they cease to live together and maintain separate households, without any formal legal dissolution of the marriage?

This situation is not uncommon. Despite the legal fiction that Hindu marriage in Bangladesh is indissoluble, de facto separations and the formation of new informal relationships are not rare in Hindu communities in Bangladesh. The social and practical reality of Hindu family life in Bangladesh is considerably more complex than the formal legal framework acknowledges, and the law's refusal to recognize this complexity by providing legal mechanisms for the formal dissolution of Hindu marriages creates cascading problems for all aspects of family law, including guardianship.

When a Hindu marriage breaks down in practice and the parents separate, questions immediately arise about who is entitled to care for and exercise authority over the children. The formal legal answer, under the existing guardianship rules, is clear: the father remains the natural guardian, and the mother, even if she is the primary carer for the children, has no independent legal guardianship authority. But this formal legal answer is often functionally useless, because the father may have abandoned the family, may be living with another woman, may have ceased to contribute to the children's financial support, and may have no practical interest in exercising his formal guardianship authority. In such cases, the mother is in the position of the primary and often sole carer for her children but has no legal authority to act on their behalf.

The reform of Hindu divorce law, examined in an earlier part of this treatise, would partially address this problem by providing legal mechanisms for the formal dissolution of Hindu marriages, which would in turn trigger the courts' jurisdiction to make custody and guardianship orders as part of the dissolution proceedings. But even without the reform of divorce law, the reform of guardianship law should address the situation of children of de facto separated Hindu families, by providing that in cases where the parents are living separately, the mother who is the primary carer for the children has independent legal authority to act as their guardian without obtaining a court order, subject to the court's jurisdiction to make a different arrangement if the circumstances require it.

8.2 Custody Disputes in Hindu Families: Judicial Practice and Reform Needs

In the absence of a formal divorce regime for Hindu families, custody disputes between Hindu parents in Bangladesh are brought before the courts under the Guardians and Wards Act of 1890, which gives the court jurisdiction to determine who should have custody of a minor child on the criterion of the child's welfare. This jurisdiction is technically applicable regardless of whether the parents are formally married or whether their marriage has been dissolved, because the Act is framed in terms of the welfare of the minor rather than in terms of the parents' marital status.

The judicial practice in these proceedings has been shaped by several competing pressures. On one hand, the welfare principle demands an individualized inquiry into the particular circumstances of each case, including the quality of each parent's care, the child's established relationships and attachments, the stability and security of each parent's household, and the child's own expressed preferences. On the other hand, the formal hierarchy of the natural guardianship rules creates a presumption in favor of the father that is difficult to overcome in practice.

Research on family court practice in Bangladesh, including the work of BLAST, the Bangladesh Legal Aid and Services Trust, and the studies conducted by Dhaka University's Department of Law and Justice, suggests that courts have been somewhat more willing in recent years to award custody of young children to mothers, particularly in cases where the father has abandoned the family or where there is evidence of domestic violence or substance abuse. This is a positive development that reflects the courts' increasing responsiveness to the welfare principle. But the research also suggests that the practical barriers to mothers obtaining custody orders, including

cost, time, and the social stigma associated with a woman who takes a matter to court rather than accepting traditional arrangements, remain very significant.

Legislative reform should address these practical barriers directly, by: simplifying the procedure for custody applications in cases where the parents have separated; providing for the mandatory appointment of a child welfare officer to report to the court on the child's welfare in all contested custody proceedings; requiring courts to make interim custody orders quickly in cases of urgency; and providing free legal aid to any party in a custody proceeding who cannot afford representation. These procedural reforms are as important as the substantive changes to the natural guardianship rules, because the best rules are only as good as the procedures through which they are applied.

8.3 The Role of Domestic Violence in Guardianship Determinations

The relationship between domestic violence and guardianship is one that has received increasing attention in comparative family law over the past two decades, driven by the recognition that domestic violence creates specific risks for children that must be addressed in guardianship and custody proceedings. Children who grow up in households where domestic violence occurs are themselves victims of that violence, even when they are not directly targeted: they are exposed to trauma, fear, and disruption that can have lasting consequences for their psychological development and wellbeing.

The question that arises in the guardianship context is what weight courts should give to evidence of domestic violence when determining who should have custody of or guardianship over children. Should domestic violence by a father against a mother be a factor that weighs against the father in a custody determination? Should it be a presumptive disqualification from guardianship, or merely one factor among many to be weighed by the court? How should courts assess allegations of domestic violence that are disputed by the alleged perpetrator?

The Domestic Violence (Prevention and Protection) Act of 2010, enacted by Bangladesh, provides legal protection to victims of domestic violence and creates mechanisms for the enforcement of protection orders. But it does not explicitly address the implications of domestic violence for guardianship and custody determinations. This gap should be addressed by a reformed Hindu Minority and Guardianship Act, which should include a provision that evidence of domestic violence by a potential guardian is a significant factor weighing against that person's appointment as guardian, and that a court making a guardianship order in a case where domestic violence has occurred must take explicit account of the safety risks to the child and to the non-violent parent.

This provision would bring Bangladesh's Hindu guardianship law into alignment with the growing international consensus that the safety of the child and the non-violent parent is a primary concern in custody and guardianship determinations involving domestic violence. It would also reflect the deeper values of the welfare principle: a guardian who has demonstrated a propensity for violence within the family context is not, other things being equal, a person whose guardianship of a minor is likely to serve the child's welfare.

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CHAPTER NINE: THE PROPERTY OF HINDU MINORS: MANAGEMENT, ACCOUNTABILITY, AND REFORM

9.1 The Guardian's Fiduciary Duties

The management of a minor child's property is one of the most practically consequential dimensions of guardianship, and it is one that the existing law addresses only inadequately. The principle, established in both the Smriti literature and the colonial case law, that the guardian manages the child's property not as its owner but as its steward, accountable to the child for the prudent management of the estate, is a sound one. But the mechanisms for enforcing this fiduciary accountability in practice are weak and inadequately utilized.

Under the Guardians and Wards Act of 1890, a court-appointed guardian of a minor's property is subject to various requirements designed to ensure accountability: the guardian must file an inventory of the ward's property, must submit annual accounts of the management of the estate, must seek the court's permission before making certain significant decisions about the property, and may be removed and made liable for breach of duty if the guardian acts improperly. These requirements are theoretically comprehensive, but in practice they are often not enforced. Courts are not well-resourced to supervise the ongoing management of wards' estates, and guardians who fail to file accounts or who misappropriate ward's property often do so with impunity.

For natural guardians, that is, for parents who are managing their children's property by virtue of their natural guardianship status rather than by court appointment, the accountability mechanisms are even weaker. The natural guardian has the same fiduciary obligations to the child as a court-appointed guardian, but the natural guardian is not subject to the same court supervision mechanisms: there is no requirement for natural guardians to file accounts with the court, no systematic review of their management of the child's estate, and no procedure for alerting the court to instances of mismanagement or abuse.

This accountability gap is particularly acute in the Hindu context, because Hindu minor children in Bangladesh may hold significant property rights following the death of a parent. Under the Dayabhaga rules of inheritance, a minor child who inherits property from a deceased parent holds that property in full ownership, not merely as a future interest: the property is the child's own, and the natural guardian who manages it holds it in trust for the child. If the guardian misappropriates or wastes this property, the child suffers a loss that may be practically irreparable if it is not detected and remedied promptly.

Legislative reform should address this accountability gap by introducing more robust supervision mechanisms for natural guardians managing minor children's property. These mechanisms could include: a requirement that natural guardians register as guardians with the court within a specified period of coming into the guardianship role, thereby bringing them within the court's supervisory jurisdiction; a simplified accounting procedure that is accessible without professional legal assistance; a provision enabling relatives of the child, civil society

organizations, or welfare officers to bring concerns about mismanagement to the court's attention; and enhanced remedies for breach of guardianship duty, including the ability to impose a charge on the guardian's own property to compensate the child for loss caused by the guardian's breach of duty.

9.2 The Special Problem of Waqf-Like Endowments in Hindu Law: Debottar Property

The concept of Debottar property, property dedicated to the service of a deity or religious institution, occupies a peculiar position in Hindu law in Bangladesh that has significant implications for the guardianship of minor beneficiaries of such endowments. Debottar property is held by a shebait, a hereditary trustee who manages the property for the benefit of the deity or institution, and who is entitled to use a portion of the income for the costs of worship and his own maintenance in exchange for his management duties. The shebaiti right, which is both a property right and a religious office, is transmissible to the shebait's heirs, including minor heirs.

When a shebait dies and the shebaiti right passes to a minor, the question of who manages the Debottar property during the minor's minority is a complex one that the existing law addresses inadequately. The natural guardian of the minor does not automatically become the manager of the Debottar property, because the shebaiti right is an office that cannot be exercised by proxy in the same way as ordinary property rights. But there is no clear legal mechanism for appointing a manager of the Debottar property during the minor's minority other than the general guardianship provisions of the Guardians and Wards Act.

The practical consequence is that Debottar properties in Bangladesh are often managed during a minor shebait's minority by informal arrangements that lack legal sanction and accountability. This creates opportunities for mismanagement, self-dealing, and even outright appropriation of the endowment property by those who exercise practical control. Given the scale of Debottar property in Bangladesh, which despite the losses of the partition and vested property crises remains substantial, this is a significant practical problem.

Legislative reform should address the management of Debottar property during the minority of a shebait by creating specific legal mechanisms that ensure both continuity of religious functions and accountability for property management. These mechanisms could draw on the endowment administration frameworks that have been developed in India under the Hindu Religious and Charitable Endowments Acts of various states, adapted to the specific features of Debottar law in the Dayabhaga tradition.

CHAPTER TEN: THE RIGHTS OF INDIGENOUS AND CUSTOMARY LAW COMMUNITIES IN THE HINDU GUARDIANSHIP CONTEXT

10.1 The Diversity of Hindu Guardianship Practices Among Indigenous Communities

The Hindu community in Bangladesh is not a monolithic entity. It comprises communities ranging from long-established Bengali Hindu families in Dhaka, Sylhet, and Chittagong to indigenous hill peoples, particularly in the Chittagong Hill Tracts, who identify as Hindu but whose family practices, including their guardianship practices, are shaped by customary law traditions that are often very different from the Dayabhaga rules that the formal legal system applies.

The Garo, Koch, and other smaller indigenous communities with Hindu religious affiliations maintain distinctive matrilineal or bilateral descent systems in which the role of the mother in family authority and property transmission is quite different from the patrilineal norm of the Brahminical Hindu tradition. In these communities, the concept of maternal guardianship is not a legal anomaly requiring special justification; it is the ordinary state of affairs, reflective of a social structure in which women are the primary bearers of family identity and property rights. The formal application of the Dayabhaga rules of paternal guardianship primacy to these communities represents not just a gender injustice but a cultural imposition: an application of a legal framework designed for one community to communities for whom it is fundamentally alien.

The question of customary law recognition for indigenous Hindu communities in Bangladesh is one that goes well beyond the specific question of guardianship, and it will be addressed more fully in Part Ten of this treatise, which focuses specifically on indigenous communities and their relationship with Hindu personal law. For present purposes, the essential point is that any reformed Hindu Minority and Guardianship Act for Bangladesh must include a provision recognizing the validity of customary guardianship practices in communities that have traditionally governed themselves by those practices, provided that such practices are not inconsistent with the welfare of children or with fundamental constitutional principles of equality and non-discrimination.

This provision would not be a license for the perpetuation of harmful customary practices under the guise of cultural autonomy; the welfare principle and the constitutional equality guarantee would continue to operate as limits on what customary practices can be recognized. But it would acknowledge the legitimate diversity of Hindu family practice in Bangladesh and resist the homogenizing tendency of a single, universal statutory framework that reflects only the practices of one dominant segment of a diverse community.

CHAPTER ELEVEN: THE GUARDIAN AD LITEM: REPRESENTING THE CHILD IN GUARDIANSHIP PROCEEDINGS

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11.1 The Conceptual Case for Independent Child Representation

One of the most significant deficiencies of the current guardianship law in Bangladesh is the absence of any systematic mechanism for independent representation of the child in guardianship proceedings. When parents dispute the custody or guardianship of a child, the child is the person whose life and welfare is at stake, but the child has no voice in the proceedings: the court receives the submissions of the two competing adults, the respective counsel, and any expert witnesses that the parties may produce, but it has no mechanism for ensuring that the child's own interests and perspectives are independently represented.

This absence of independent child representation is not merely a procedural deficiency; it is a structural failure that reflects and reinforces the conception of the child as an object of guardianship rather than as a subject with rights. The best interests principle, properly understood, requires not merely that decision-makers consider what is in the child's interests but that they do so with the benefit of information and representation that is specifically focused on the child's perspective, rather than filtered through the advocacy of competing adults.

The mechanism most commonly used in other jurisdictions to address this deficiency is the appointment of a guardian ad litem, that is, a legally trained professional who is appointed by the court specifically to represent the child's interests in the proceedings. The guardian ad litem is not the same as the child's guardian in the substantive sense: the guardian ad litem is an advocate for the child's interests in the legal proceedings, while the substantive guardian is the person who will have ongoing responsibility for the child's care after the proceedings are concluded. The guardian ad litem's role is to investigate the child's circumstances, ascertain the child's views (to the extent that the child is old enough and mature enough to form and express them), and make submissions to the court on what arrangement will best serve the child's welfare.

A reformed Hindu Minority and Guardianship Act for Bangladesh should establish the guardian ad litem mechanism as a standard feature of contested guardianship proceedings. The act should provide for the appointment of a guardian ad litem by the court in all contested guardianship proceedings involving children, funded from public resources for parties who cannot afford private legal representation. It should specify the qualifications and training required for guardians ad litem, the scope of their investigative mandate, and the reporting requirements for their submissions to the court.

11.2 The Child Welfare Officer: An Administrative Complement to Judicial Representation

The guardian ad litem mechanism is a judicial mechanism, operative within formal legal proceedings. But the welfare of children who are under guardianship is a continuous concern that cannot be adequately addressed through judicial proceedings alone. A child whose guardian is neglecting or abusing them needs access to protection mechanisms that operate outside formal court proceedings: mechanisms that are embedded in the administrative structure of child welfare services, that can be triggered without the cost and delay of legal action, and that can provide immediate practical assistance as well as access to legal remedies.

In the United Kingdom, Canada, and Australia, the functions of continuous oversight of children under guardianship are performed by child welfare officers within government children's services agencies, who have the authority to investigate concerns about children's welfare, to provide support services to families, and to bring matters to the court's attention where the child's welfare is seriously at risk. This administrative child welfare system complements the judicial guardianship system, providing a continuous surveillance and support function that the courts alone cannot provide.

Bangladesh has a Children Act of 2013 that establishes a framework for child welfare administration, including the appointment of probation officers and child welfare boards. But this framework has not been specifically adapted to the guardianship context for Hindu families, and the resources available for its implementation are inadequate for its mandate. A reformed Hindu Minority and Guardianship Act should specifically provide for the integration of the Act's guardianship supervision mechanisms with the child welfare administrative system established by the Children Act of 2013, ensuring that children under Hindu guardianship arrangements are within the scope of the administrative welfare system's oversight responsibilities.

CHAPTER TWELVE: THE POLITICAL ECONOMY OF HINDU GUARDIANSHIP REFORM IN BANGLADESH

12.1 Why Reform Has Not Happened: A Political Analysis

The failure of Bangladesh to reform its Hindu guardianship law in the fifty-three years since independence is not an accident of legislative priorities or a simple oversight. It is the product of a specific configuration of political interests, institutional inertia, and social dynamics that has consistently blocked reform despite a well-documented record of the law's harmful effects. Understanding this political configuration is essential for anyone who wants to build an effective reform strategy.

The most immediate explanation for the absence of reform is the political vulnerability of the Hindu minority in Bangladesh. A minority community that represents less than eight percent of the population, that is economically marginalized, that is geographically dispersed, that has historically been targeted with communal violence in moments of political tension, and that has since August 2024 been subjected to an unprecedented wave of attacks on its persons and property, is not a community that is in a strong position to make effective political demands. The Hindu community in Bangladesh lacks the electoral weight, the organizational resources, and the political connections that would be needed to force the issue of Hindu personal law reform onto the legislative agenda over the objections of those who prefer the status quo.

The political leaders who would have to champion reform, principally the leadership of whatever party is in government, face strong incentives to avoid the issue. Reform of Hindu personal law touches directly on questions of religion, tradition, and community identity that are politically explosive in Bangladesh's charged communal atmosphere. Any government that proposed reform

of Hindu personal law would risk being accused of interfering with religious tradition by Hindu conservatives and of favoring the Hindu minority at the expense of the Muslim majority by populist religious politicians. Neither accusation is justified, but neither is politically costless. The rational political calculation for most political leaders has therefore been to leave the issue alone.

This calculation is reinforced by the structural features of Bangladesh's electoral democracy. Bangladesh uses a first-past-the-post electoral system in single-member constituencies, which incentivizes politicians to focus on constituency-level concerns rather than national minority rights issues. The Hindu minority is geographically dispersed across most constituencies in Bangladesh, meaning that in most constituencies the Hindu vote is not decisive. Politicians who represent constituencies with larger Hindu populations have some incentive to attend to Hindu community concerns, but even they face countervailing pressures from Muslim majority voters who may not prioritize Hindu personal law reform.

The only way to break this political deadlock is to change the political calculus: to raise the visibility and the political salience of Hindu personal law reform as an issue, to build alliances that extend beyond the Hindu community, to connect the issue to broader concerns about gender equality and constitutional principle that resonate across community boundaries, and to create political costs for continued inaction. This is the political strategy that the Bangladesh Hindu Law Reform Council and allied civil society organizations have been pursuing since their founding in 2021, with limited but not negligible success.

12.2 The Post-August 2024 Context: Opportunities and Risks

The political upheaval of August 2024, in which the student-led uprising removed the Awami League government of Sheikh Hasina and installed the interim administration led by Muhammad Yunus, created a new political context for the Hindu personal law reform debate. This new context presents both opportunities and serious risks.

The opportunities arise from the interim government's stated commitment to constitutional reform and rule of law. The Yunus administration has positioned itself as committed to a clean break with the patronage politics and institutional corruption of the Hasina era, and has established a Law Reform Commission with a broad mandate to recommend legislative changes that would bring Bangladesh's laws into greater conformity with constitutional principles. In principle, this mandate encompasses the reform of Hindu personal law, which is as clearly in need of constitutional alignment as any other body of law in Bangladesh.

The interim government has also engaged, to a limited extent, with Hindu community concerns in the context of addressing the violence that followed the August 2024 uprising. The condemnation of attacks on Hindu communities by senior government officials, the establishment of task forces to investigate communal violence, and the promised legislative measures to protect minority rights: all of these provide at least a political opening for engagement on the broader question of Hindu personal law reform.

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But the risks are also real and must be acknowledged. The political context in Bangladesh following August 2024 has been characterized by intense Islamist political activism, by the increased public presence of Islamist organizations that had been suppressed under the Hasina government, and by a communal atmosphere that has been, by the testimony of Hindu community leaders and human rights organizations, more threatening and more hostile to minority communities than at any time since the early years of independence. This is not a political context in which a government that depended on Islamist political support for its political stability would find it easy to champion the reform of Hindu personal law, even if individual members of the government were personally committed to such reform.

The interim government's track record on Hindu community concerns in the period since August 2024 has also been mixed, to put it charitably. The wave of violence against Hindu communities in the weeks following the August uprising was not effectively prevented or prosecuted. The demolition of the Durga temple in Khilgaon, Dhaka, in June 2025, which the government defended as a lawful administrative action against an unauthorized structure while Hindu community leaders and the Indian government characterized it as an act of religious aggression, illustrated the tensions between the government's stated commitments to minority protection and its actual behavior. The June 2025 demolition involved Bangladesh Railways removing a puja mandap in Khilgaon that the government claimed was built without permission and retained after the Durga Puja celebration of October 2024 in violation of an agreement with the railway authority.

In this context, the reform of Hindu personal law must be pursued not merely as a request to the government but as a sustained political and legal campaign that builds public understanding of the issues, develops constitutional and legal arguments that can be advanced in the courts as well as in the legislature, and creates the kind of broad-based political coalition that can generate sustained pressure for change even in a challenging political environment.

12.3 The Role of the Law Commission

The Bangladesh Law Commission, established as a permanent advisory body to the government on matters of law reform, has an important role to play in the Hindu personal law reform process. The Commission has in the past examined various aspects of personal law in Bangladesh and produced recommendations that, while not always immediately implemented, have contributed to the development of the legislative reform agenda.

The Commission should be tasked with producing a comprehensive report on the state of Hindu personal law in Bangladesh, examining all domains, including guardianship, inheritance, marriage, divorce, adoption, and maintenance, identifying the specific provisions that are most urgently in need of reform, and recommending specific legislative changes. Such a report, if produced with genuine scholarly rigour and genuine engagement with the affected communities, would provide an authoritative foundation for legislative action that is much more difficult for political opposition to dismiss than advocacy from civil society organizations or academic writing.

The Commission's report should be produced through a process of genuine community consultation: it should hold public hearings in multiple cities and districts of Bangladesh, inviting testimony from Hindu community members of all castes, classes, and regions, from women's organizations, from civil society bodies concerned with minority rights, from legal practitioners who work in this area, and from academic experts. The diversity of perspectives that such a consultation would generate is itself valuable, not merely as a form of procedural legitimacy but as a source of substantive insight into the real-world operation of Hindu personal law and the real-world needs of the people it governs.

CHAPTER THIRTEEN: A PROPOSED HINDU MINORITY AND GUARDIANSHIP ACT FOR BANGLADESH

13.1 The Structural Approach: Building on India's 1956 Act

A reformed Hindu Minority and Guardianship Act for Bangladesh should take as its starting point the structure of the Indian Hindu Minority and Guardianship Act of 1956, but it should improve on that Act in several significant respects that reflect the lessons learned from sixty-five years of the Act's operation in India and from the development of international human rights law in the intervening period. The following is an outline of the key provisions of such an Act.

Chapter I: Preliminary. The Act should begin with a statement of its purpose: to establish the law governing the guardianship and minority of Hindus in Bangladesh in a manner consistent with the welfare of children, the equality of parents, and the fundamental rights guaranteed by the Constitution of Bangladesh. The Act should define the key terms: minor, guardian, natural guardian, testamentary guardian, court-appointed guardian, welfare of the minor, and child's best interests. The Act should explicitly state that in all proceedings under the Act, the welfare of the minor shall be the paramount consideration, and that in determining the welfare of the minor, the court shall have regard to the minor's physical, emotional, educational, and developmental needs; the minor's established relationships and attachments; the minor's own views, having regard to the minor's age and maturity; the ability of each proposed guardian to meet the minor's needs; and any risk of harm to the minor from any proposed arrangement.

Chapter II: Natural Guardians. The Act should establish that the father and the mother are jointly and equally the natural guardians of their minor legitimate children, with respect to both the persons and the property of those children. The Act should explicitly provide that neither parent's natural guardianship takes precedence over the other's, and that in the event of a dispute between the parents about a guardianship decision, either parent may apply to the court for a determination under Chapter V of the Act. The Act should also address the natural guardianship of illegitimate children, providing that the mother is the natural guardian of an illegitimate minor child, but that the court may appoint the natural father as a co-guardian if it is satisfied that this is in the welfare of the child.

Chapter III: Testamentary Guardians. The Act should preserve the right of both parents to appoint a testamentary guardian but should provide that a testamentary appointment made by one parent does not take effect if the other parent survives and is not disqualified from acting as natural guardian. The Act should also provide that a court may set aside a testamentary appointment if it determines that giving effect to the appointment would not be in the welfare of the minor.

Chapter IV: Guardians of Property. The Act should provide specific rules for the management by natural and testamentary guardians of a minor's property. The guardian of a minor's property must manage the property prudently, in the minor's best interests, and must not apply the property for the guardian's own benefit. The guardian must maintain accounts of the management of the estate and must produce those accounts to any person with a legitimate interest in the minor's welfare on reasonable request. The court may, on the application of any interested party, order the guardian to produce accounts before the court and may make such orders as it thinks fit for the protection of the minor's property interests.

Chapter V: Court Powers. The Act should establish the court's jurisdiction to make orders appointing, varying, or terminating guardianship arrangements in all cases where such an order is required in the welfare of the minor. The court's jurisdiction under this Chapter is in addition to and not in derogation of the court's jurisdiction under the Guardians and Wards Act of 1890. In exercising its jurisdiction, the court shall give effect to the welfare principle set out in Chapter I. The court shall appoint a guardian ad litem for the child in all contested proceedings, funded from public resources for parties who cannot afford private representation. The court shall ascertain the views of any minor who is of sufficient age and maturity to form and express views, and shall give those views due weight in its determination.

Chapter VI: Welfare of the Minor: Specific Provisions. This Chapter should contain specific provisions elaborating the welfare principle in its application to particular circumstances. It should provide that the court shall regard evidence of domestic violence by a proposed guardian as a significant factor weighing against that guardian's appointment. It should provide that evidence of the long-term pattern of care and relationship between the child and each proposed guardian is a relevant factor in assessing welfare. It should provide that the child's cultural, religious, and community identity are relevant factors in the welfare assessment. It should provide that the court may appoint a child welfare officer to investigate the child's circumstances and report to the court, and that such an officer's report shall be made available to all parties and to the guardian ad litem.

Chapter VII: Special Provisions for Disabled Children. This Chapter should contain specific provisions addressing the guardianship of minor children with disabilities, including provisions for the assessment of the welfare of disabled children, the duty of guardians to facilitate the maximum possible participation of disabled children in decisions affecting them, and the court's supervisory jurisdiction over guardianship arrangements involving children with complex needs.

Chapter VIII: Customary Law. This Chapter should provide that the Act does not apply to members of Hindu communities that have traditionally governed guardianship by customary law

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that is inconsistent with the provisions of the Act, provided that such customary law is not inconsistent with the welfare of children or with fundamental constitutional principles of equality and non-discrimination. Any claim to exemption from the Act on grounds of customary law must be supported by evidence that the relevant custom is well-established and generally accepted within the relevant community.

Chapter IX: Transitional Provisions. The Act should contain provisions addressing its application to existing guardianship arrangements and ongoing proceedings, ensuring a smooth transition from the previous legal regime without prejudicing vested rights or pending proceedings.

Chapter X: Miscellaneous. Including provisions on the relationship of the Act to other laws, the duty of the court to seek the views of the Law Commission on questions of interpretation, and the review of the Act by the Law Commission within five years of enactment.

13.2 The Child's Voice: Procedural Mechanisms

The Act's provision for the ascertainment of the child's views in contested proceedings deserves separate elaboration, because the implementation of this provision will require not merely statutory authority but specific procedural mechanisms and trained personnel.

Courts are not always well-placed to ascertain directly the views of young children. A formal court hearing is an intimidating environment for a child, and direct judicial questioning of a child in the presence of both parents and their lawyers is likely to generate highly filtered and strategically shaped responses rather than genuine expression of the child's views and preferences. International experience suggests that the most effective mechanism for ascertaining the views of children in custody and guardianship proceedings is through the guardian ad litem, who can meet with the child in a neutral and informal setting, can use age-appropriate communication methods, and can build a relationship of trust with the child that enables genuine communication.

A reformed Act should therefore specify that the primary mechanism for ascertaining the child's views is the guardian ad litem's direct engagement with the child, supplemented if necessary by expert assessment by a child psychologist or social worker. The guardian ad litem's report to the court should include a description of the methods used to ascertain the child's views, a summary of those views, and an assessment of the weight that should be given to them in light of the child's age and maturity. The court should be required to address the child's views explicitly in its written reasons for any guardianship order, explaining what weight it has given to those views and why.

CHAPTER FOURTEEN: JURISPRUDENTIAL PERSPECTIVES: FEMINIST LEGAL THEORY, CHILD RIGHTS JURISPRUDENCE, AND THEIR APPLICATION TO HINDU GUARDIANSHIP

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14.1 Feminist Legal Theory and Guardianship

The critique of Hindu guardianship law from a feminist legal theory perspective is multi-dimensional and requires careful exposition. The most immediate critique is the liberal feminist one: the law treats mothers and fathers unequally, and this unequal treatment is unjustifiable on any ground except the discredited ground of sex-based hierarchy. A liberal feminist reform agenda would therefore demand equal legal recognition for mothers and fathers as natural guardians, equal access to the courts' guardianship jurisdiction, and equal weight to the testimony and preferences of mothers and fathers in contested proceedings.

But feminist legal theory does not speak with one voice on these questions, and the diversity of perspectives within feminist jurisprudence generates a richer and more complex reform agenda than the liberal equality argument alone can capture. Care ethics feminism, associated with Carol Gilligan, Nel Noddings, and their successors in feminist philosophy, challenges the liberal rights-based framework from a different direction. Care ethics feminism argues that relationships of care, and the obligations that arise from those relationships, cannot be adequately captured in the language of individual rights: care obligations are not merely contractual or chosen; they arise from the relational context in which persons live, and they are constitutive of the relationships themselves. A mother who has been the primary carer for her children over many years does not have a guardianship claim simply because she has a formal legal right to equal treatment; she has a guardianship claim because of the relationship of care that she has built with her children, a relationship that cannot be disregarded without harming those children.

This care ethics perspective has specific implications for guardianship law reform. It suggests that the reform should give primacy not merely to formal legal equality between parents but to the quality of the caring relationship between each parent and the child: the parent who has been the primary carer, who has been most present in the child's emotional and practical life, should have a stronger guardianship claim than the parent who has been less engaged, regardless of the formal equality of their legal status. A reformed Act that establishes formal equality between parents but gives no special weight to the pattern of actual care that each parent has provided would be consistent with liberal feminism but would fall short of what care ethics feminism demands.

The intersection of feminist legal theory with postcolonial jurisprudence adds yet another dimension to the analysis. Postcolonial feminist scholars like Uma Narayan have argued that the reform of personal law in postcolonial societies must be sensitive to the specific conditions of women's lives in those societies, and must not simply import Western liberal feminist frameworks without regard for the cultural and historical context. In the Bangladeshi context, this means that guardianship reform must engage with the specific ways in which the intersection of caste, class, religion, and gender shapes the experiences of Hindu mothers, and must design reform provisions that address these specificities rather than assuming a homogeneous community of rights-bearing individuals.

14.2 Child Rights Jurisprudence: From Object to Subject

The transformation of child rights jurisprudence over the past three decades, from a conception of children primarily as objects of adult authority and state protection to a conception of children as rights-bearers in their own right, is one of the most significant developments in contemporary international law. The CRC, which entered into force in 1990, is the legal expression of this transformation, but it builds on a philosophical tradition that has deeper roots in the work of John Holt, Richard Farson, and other child liberation theorists of the 1970s, in the developmental psychology of Jean Piaget and his successors, and in the political philosophy of persons who argued that the category of childhood should not automatically exclude individuals from participation in decisions that affect their lives.

The specific contribution of child rights jurisprudence to the guardianship reform debate is the insistence that the child's own perspective on guardianship decisions is legally relevant and must be procedurally accessible. This is the contribution of CRC Article 12, discussed earlier in this Part. But child rights jurisprudence also contributes a more fundamental conceptual reorientation: it demands that we understand the purpose of guardianship from the perspective of the child rather than from the perspective of the guardians. The question is not what rights do parents have over their children but what rights do children have to competent, committed, and accountable guardianship. This reorientation changes the entire logic of guardianship law: the guardian's authority is derived from and limited by the child's rights, and any exercise of guardianship authority that violates those rights is legally invalid regardless of what the personal law tradition says about the guardian's formal authority.

Applied to Hindu guardianship law in Bangladesh, this rights-based reorientation demands that we evaluate every provision of the law, and every proposed reform, from the standpoint of the children whose welfare is at stake. The rule of paternal primacy in natural guardianship is not to be evaluated merely by asking whether it respects the father's traditional authority or whether it serves the formal equality of parents; it is to be evaluated by asking whether it serves the rights and welfare of children. And the answer, as the evidence on the operation of the current law in Bangladesh demonstrates conclusively, is that it frequently does not.

14.3 Transformative Constitutionalism and the Guardianship Question

The concept of transformative constitutionalism, developed by Karl Klare in the context of South Africa's post-apartheid constitutional order and elaborated by scholars including Karin van Marle, Drucilla Cornell, and Sibonile Khoza, provides a theoretical framework for understanding the relationship between constitutional law and the reform of Hindu guardianship in Bangladesh that is more ambitious and more demanding than simple constitutional compliance.

Transformative constitutionalism holds that a constitution that is genuinely committed to justice does not merely prohibit certain forms of discrimination or protect certain established rights; it demands the active use of legal institutions to transform social structures that perpetuate injustice. Applied to the question of Hindu guardianship law in Bangladesh, transformative constitutionalism would argue that the Constitution's commitments to equality and non-

discrimination impose on the state an affirmative obligation to reform the guardianship law, not merely a negative prohibition against enforcing discriminatory rules. The state cannot discharge its constitutional obligation by simply not interfering with Hindu personal law; it must actively ensure that the law governing the guardianship of Hindu children is consistent with the constitutional principles it has committed itself to upholding.

This argument from transformative constitutionalism connects directly to the jurisprudence of the Bangladesh Supreme Court, which has in several landmark decisions recognized the concept of constitutional positive obligations: that the state has affirmative duties to protect and realize constitutional rights, not merely negative duties to refrain from violating them. In the context of Hindu personal law, the constitutional positive obligation would be the obligation to reform a legal system that systematically discriminates against women on the ground of sex, even though the state has not created that discrimination in the first instance but has merely inherited it from the colonial legal order.

The political and practical significance of framing the guardianship reform argument in transformative constitutionalist terms is that it elevates the argument from a request for legislative favor to a demand for constitutional compliance. A government that ignores the request of a civil society organization is exercising its political prerogative; a government that fails to discharge its constitutional obligations is acting unlawfully and is subject to judicial review. Framing the guardianship reform demand as a constitutional obligation, and pursuing that argument through strategic litigation in the courts, is therefore not merely a legal strategy but a political one: it changes the terrain of the reform battle from the legislature, where the Hindu minority has limited political leverage, to the courts, where the argument is about legal rights rather than political influence.

CHAPTER FIFTEEN: RECENT DEVELOPMENTS AND THE CONTEMPORARY REFORM DEBATE

15.1 The 2024 to 2026 Academic Landscape

The academic literature on Hindu personal law reform in Bangladesh has grown significantly in the period from 2024 to 2026, reflecting both the growing urgency of the reform agenda and the increased international attention to the situation of Hindu minorities in Bangladesh following the August 2024 upheaval. Several developments in this literature deserve specific attention.

The article published in the SSRN Comparative Law and Transnational Studies eJournal in August 2025, titled "Towards Reform: Hindu Personal Law in the Context of Bangladesh," provides the most comprehensive recent academic analysis of the reform agenda across all domains of Hindu personal law, including guardianship. The article documents the persistence of discriminatory provisions in Hindu personal law and argues for a comprehensive legislative reform modelled on the Indian Hindu Code Acts of the 1950s, adapted to the specific features of the Dayabhaga school and the Bangladeshi constitutional context. The article's engagement with

the post-August 2024 political context is particularly valuable, as it provides the most up-to-date analysis of the reform opportunities and challenges in the current political environment.

The work of the Bangladesh Hindu Law Reform Council, founded in 2021, has produced a growing body of advocacy documentation that, while not strictly academic in character, provides valuable evidence of community perspectives on the reform agenda. The BHLRC's specific demand for equal guardianship rights under a reformed Hindu Guardianship Act is a central element of the Council's five-point reform programme. The Council's characterization of the existing guardianship law as discriminatory and unjust, as reported in The Daily Star, reflects the view of those within the Hindu community who have experienced the law's harmful effects first-hand and who have concluded that reform is not merely desirable but morally necessary.

The academic article on Hindu minority and guardianship in Bangladesh published on Academia.edu in November 2024, which focuses specifically on the question of plausible reformations of the guardianship regime, provides a detailed doctrinal analysis of the existing law and a set of reform proposals that are broadly consistent with the approach advocated in this Part, including the demand for equal parental guardianship rights and the introduction of the child welfare principle as the paramount criterion in court proceedings. The article's analysis of the specific ways in which the law's gender bias operates in practice, through its effects on custody disputes, property management, and access to education, is particularly valuable for the reform debate.

15.2 The Eurasiareview Analysis and the Broader Reform Agenda

The OpEd published in Eurasiareview in January 2025, authored by Advocate Bipasha Rani Paul, provides a practitioner's perspective on the reform agenda that complements the academic analyses. Advocate Paul's analysis is notable for its insistence on the connection between guardianship reform and the broader reform agenda: she argues that the absence of reform in guardianship law is part of a wider pattern of legislative neglect of Hindu personal law that extends to inheritance, marriage, maintenance, and adoption, and that the reform of each domain is connected to and reinforces the reform of the others.

This holistic perspective on Hindu personal law reform is important and is consistent with the approach of this treatise. The different domains of Hindu personal law are not isolated legal compartments; they are interconnected dimensions of a single legal system that governs the entire range of personal and family relations within Hindu communities. The discriminatory provisions of guardianship law reinforce and are reinforced by the discriminatory provisions of inheritance law: a mother who has no independent inheritance rights is economically vulnerable in a way that compromises her ability to care for her children effectively, and her compromised economic position in turn affects her ability to contest guardianship disputes effectively in court. Reform of one domain without reform of the others will therefore produce only partial and unstable improvements in the position of Hindu women in Bangladesh.

This interconnection of domains is also a political argument for a comprehensive rather than a piecemeal approach to reform. A government that is willing to commit political capital to Hindu

personal law reform should be encouraged to undertake comprehensive reform of all domains rather than symbolic reform of only the most visible or politically convenient elements. The argument for comprehensiveness is not merely that partial reform is better than no reform, though this is true; it is also that comprehensive reform, by addressing the entire system of disadvantage at once, has a greater transformative impact than piecemeal reform and is more likely to produce lasting change in the practical conditions of Hindu women's lives.

15.3 Judicial Developments: The High Court Division's Recent Guardianship Jurisprudence

The High Court Division of Bangladesh's Supreme Court has, in the period since 2020, issued several decisions on guardianship questions that reflect an evolving judicial understanding of the relationship between the welfare principle, the natural guardianship rules, and the constitutional equality guarantee. These decisions, while primarily arising in the Muslim family law context, have implications for Hindu guardianship law that deserve examination.

The ruling that mothers can be the sole guardian of their children, referenced in the academic literature reviewed in the previous section, represents a constitutionally significant development in Bangladesh's guardianship jurisprudence. The court's reasoning in this ruling, which grounded the mother's guardianship claim in constitutional rights rather than merely in personal law provisions, has a logic that extends beyond the Muslim family law context to encompass the Hindu personal law context as well. If the constitutional equality guarantee requires that mothers be recognized as capable sole guardians of their children in the Muslim family law context, the same constitutional provision requires the same recognition in the Hindu personal law context.

The implication of this constitutional reasoning for the reform agenda is significant: it suggests that even without specific legislative action, Bangladeshi courts have the constitutional authority to modify the application of the natural guardianship rules of Hindu personal law to give effect to the constitutional equality guarantee. Strategic litigation that directly challenges the constitutional validity of the paternal primacy rule in Hindu natural guardianship, and that invites the High Court Division to apply the constitutional reasoning of the recent mother-guardian ruling to the Hindu context, is therefore a valuable complementary strategy to the legislative reform campaign.

The courts' role in guardianship reform is not merely as venues for testing the constitutionality of existing rules; it is also as institutions that can develop, through their exercise of the welfare jurisdiction, a body of precedent that gives concrete content to the best interests principle in the specific cultural and social context of Hindu families in Bangladesh. Every well-reasoned guardianship judgment that gives primacy to the child's welfare over the formal hierarchy of natural guardianship, that gives due weight to the child's own expressed preferences, and that takes account of the full context of each child's family relationships and cultural environment, contributes to the development of a body of Bangladeshi guardianship jurisprudence that is more responsive to the needs of children than the formal rules inherited from the colonial period.

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CHAPTER SIXTEEN: TOWARDS A MODERN LAW OF HINDU GUARDIANSHIP IN BANGLADESH: SYNTHESIS AND PRESCRIPTION

16.1 The Reform Agenda: A Synthesis

The analysis developed across the previous fifteen chapters of this Part converges on a set of conclusions about what reform of Hindu guardianship law in Bangladesh requires. These conclusions can be stated concisely, though each one conceals a complexity that the preceding chapters have sought to illuminate.

First, the rule of paternal primacy in natural guardianship must be abolished and replaced with a rule of equal and co-equal natural guardianship by both parents. This change is required by the constitutional equality guarantee, by Bangladesh's obligations under CEDAW and the CRC, by the welfare principle that must be the foundational criterion for guardianship law, and by the internal values of the Hindu jurisprudential tradition itself, which has always understood guardianship as an obligation in service of the child's welfare rather than as a prerogative of paternal authority.

Second, the welfare of the child must be explicitly and unambiguously established as the paramount consideration governing all decisions about guardianship, custody, and the management of children's property. This principle, already implicit in the Guardians and Wards Act and in the values of the Hindu tradition, must be given explicit statutory form in a reformed Hindu Minority and Guardianship Act, and must be accompanied by procedural mechanisms that enable it to be applied effectively.

Third, the child's own voice must be procedurally accessible in all contested guardianship proceedings. The guardian ad litem mechanism, the requirement that courts ascertain the views of children old enough to form them, and the obligation to give those views due weight and to explain in writing any decision to override them, are the specific mechanisms through which this third requirement is to be implemented.

Fourth, the accountability of guardians for their management of children's property must be significantly strengthened. The existing gap in accountability for natural guardians managing children's estates must be closed through registration requirements, simplified accounting procedures, and enhanced court supervision mechanisms.

Fifth, the specific vulnerabilities of particular groups of Hindu children, including Dalit children, children of de facto separated families, children with disabilities, and children in indigenous communities governed by customary law, must be specifically addressed in a reformed Act, through provisions that are tailored to the distinctive needs and circumstances of each group.

Sixth, the institutional infrastructure for the administration of guardianship law must be reformed, with the establishment of specialized family courts with expertise in Hindu personal law, the creation of child welfare officer positions with specific responsibilities for Hindu

families, and the provision of free legal aid for parties in guardianship proceedings who cannot afford private representation.

16.2 The Path to Reform: Strategic Considerations

The path from the diagnosis offered in this Part to the reform it recommends is not a simple one, and it requires a strategic engagement with the political, institutional, and cultural obstacles that have prevented reform for fifty-three years. The following considerations are essential for any reform strategy.

Community ownership is the first and most fundamental requirement. Reform of Hindu personal law cannot be imposed from above by a state that is indifferent or hostile to the Hindu community's genuine interests; it must be driven from within by the community itself, articulated through the voices of those who experience the law's harmful effects, and shaped by the values and aspirations of the community rather than by external templates. The Bangladesh Hindu Law Reform Council, Dhaka University's Department of Law, and the various Hindu women's organizations active in Bangladesh are the natural leaders of this community-driven reform process. Their work deserves academic support, legal expertise, and the amplification that comes from connections with the broader national and international human rights community.

Constitutional litigation is the second strategic tool. The arguments for the constitutional invalidity of the paternal primacy rule in Hindu natural guardianship are strong, and the High Court Division's recent jurisprudence on the mother's guardianship rights provides a favorable precedent. Well-designed strategic litigation, brought in cases where the harm to specific mothers and children is concrete and well-documented, could produce judicial decisions that significantly advance the reform agenda even without legislative action.

International advocacy is the third strategic tool. The CEDAW Committee's consistent concern about discriminatory provisions in Hindu personal law, the CRC Committee's monitoring of Bangladesh's implementation of the Convention on the Rights of the Child, the US Commission on International Religious Freedom's documentation of the persecution of Hindu minorities in Bangladesh, and the broader international human rights community's attention to the situation of minorities in Bangladesh: all of these create pressure on the Bangladeshi government that can be harnessed in support of the reform agenda. International advocacy does not replace domestic political organizing, but it can create an external dimension of pressure that makes the political cost of continued inaction higher for the government.

Legislative engagement is the fourth strategic tool, and it must proceed in parallel with, rather than instead of, the constitutional litigation and international advocacy strategies. The Law Commission should be engaged, expert legal drafting for a model Hindu Minority and Guardianship Act should be prepared, and the political work of building alliances across community boundaries, particularly with women's organizations from the Muslim majority community that share the concern with gender equality in family law, should be pursued systematically.

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CONCLUSION TO PART FIVE

The law of guardianship, apparently technical and procedural on the surface, goes to the heart of what it means to be a member of a family in the eyes of the law. For Hindu mothers in Bangladesh, the existing law of natural guardianship says something deeply and unjustifiably harsh: that their relationship with their children, however loving, however devoted, however practically central to those children's lives, is not their primary legal relationship; that the father's authority takes precedence over theirs by the simple fact of his sex; and that they must either operate in the shadow of that authority or seek from a court what the law gives to fathers automatically, as a birthright.

This is wrong. It is wrong as a matter of constitutional law, wrong as a matter of international human rights law, wrong as a matter of the welfare of children who are best served by having both their parents fully empowered to care for them, and wrong as a matter of the internal values of the Hindu jurisprudential tradition itself, which has always understood guardianship as an obligation of care rather than as a prerogative of paternal authority. The reform of Hindu guardianship law in Bangladesh is therefore not a matter of legislative preference but of legal obligation: an obligation to the Constitution, an obligation to the international instruments Bangladesh has ratified, an obligation to the children whose welfare is affected, and an obligation to the mothers whose human dignity and legal equality is at stake.

The proposed Hindu Minority and Guardianship Act outlined in Chapter Thirteen of this Part is a detailed and comprehensive blueprint for meeting that obligation. It is a blueprint that draws on the best of the Indian 1956 experience, on the more radical equal-guardianship commitment of Nepal's 2017 National Civil Code, on the international child rights jurisprudence that has developed the best interests principle into a sophisticated and operationally rich framework, on the feminist legal theory that has illuminated the specific ways in which guardianship law can either perpetuate or challenge gender hierarchy, and on the specific insights of postcolonial jurisprudence that remind us of the need to engage with the living law of Hindu communities rather than merely with the formal rules of the textual tradition.

The path to enacting this legislation will be difficult, for reasons that the political analysis in Chapter Twelve has laid out with honesty. But the difficulty of the path does not diminish the clarity of the destination. Thirteen million citizens of Bangladesh, the Hindu community that contributes to the cultural richness and productive vitality of the nation, deserve a legal system of guardianship that treats their children with the full protection of the law and that treats their mothers with the full equality guaranteed by the Constitution. That is the destination. The work of getting there belongs to all who believe that law should serve justice.

BIBLIOGRAPHY AND FURTHER READING FOR PART FIVE

The following works have been specifically consulted in the preparation of Part Five and are recommended for further study.

On the classical Hindu law of guardianship, P.V. Kane's History of Dharmasastra, Volumes II and III, remains the most authoritative and comprehensive treatment of the ancient textual sources. Jimutavahana's Dayabhaga, in the translation and commentary by J.H. Nelson published in the Tagore Law Lectures series, provides the specific Dayabhaga school analysis. Julius Jolly's treatise on Hindu law and custom provides a valuable comparative perspective across the different regional schools.

On the colonial transformation of Hindu guardianship law, Lata Mani's Contentious Traditions: The Debate on Sati in Colonial India and Sudipta Kaviraj's Civil Society: History and Possibilities provide the theoretical framework for understanding how colonial encounters reshaped Hindu legal categories. J.D.M. Derrett's Hindu Law: Past and Present provides the most comprehensive legal-historical analysis of the colonial period's impact on Hindu personal law.

On the Indian Hindu Minority and Guardianship Act of 1956, Paras Diwan's Modern Hindu Law (24th edition, 2024) provides the most up-to-date doctrinal analysis. The commentary on the Act in Mulla's Principles of Hindu Law (23rd edition) provides the essential practitioner perspective. The JETIR article on the Hindu Minority and Guardianship Act published in March 2024 provides a current academic overview.

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On the Bangladesh guardianship context, the Academia.edu paper titled "Hindu Minority and Guardianship in Bangladesh: Plausible Reformations," published in November 2024, provides the most recent and comprehensive academic analysis specifically focused on the Bangladeshi situation. The Counsels Law Partners analysis of adoption and guardianship in Bangladesh (March 2024) provides the practitioner perspective on the existing legal framework.

On the constitutional challenges to guardianship law, the contributions to the Bangladesh Constitution at Fifty symposium volume (2022) provide the essential background. The High Court Division's recent rulings on women's guardianship rights, as documented by BLAST and the Bangladesh Legal Aid and Services Trust, provide the specific judicial developments.

On child rights jurisprudence, John Eekelaar's Family Law and Personal Life (2nd edition, 2017) provides the philosophical framework. Michael Freeman's The Rights and Wrongs of Children (1983), though now dated in some respects, remains an essential intellectual history of the development of child rights theory. The UNICEF publication on the CRC's implementation in South Asia (2024 edition) provides the regional comparative context.

On feminist legal theory and guardianship, Carol Gilligan's In a Different Voice (1982) and Nel Noddings's Caring: A Relational Approach to Ethics and Moral Education (3rd edition, 2013) provide the care ethics foundation. Katharine Silbaugh's article "Commodification and Women's Household Labor" (Yale Journal of Law and Feminism, 1996) provides the economic feminist perspective. Brenda Cossman and Ratna Kapur's Secularism's Last Sigh: Hindutva and the (Mis)Rule of Law provides the postcolonial feminist perspective on personal law reform in South Asia.

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On Nepal's National Civil Code of 2017, the official English translation published by the Nepal Law Commission is the primary source. The University of Melbourne Law School South Asia Research series volumes from 2019 to 2024 provide the academic analysis of the Code's implications for gender equality in personal law.

The Bangladesh Hindu Law Reform Council's published materials, available at bhlrc.org, provide the essential civil society advocacy perspective and document the community voices that must be central to any genuine reform process.

Part Six of this treatise will examine the Hindu community's rights in collective religious institutions and temple properties in Bangladesh: the legal framework governing Hindu temples, Debottar and Sevait properties, religious endowments, and the institutions that manage them; the crisis of temple property dispossession that has followed from the combined impact of the Vested Property Act, communal violence, and institutional neglect; the constitutional framework for protecting religious institutions; the comparative experience of India's system of religious endowment administration; the legal standing of Hindu religious organizations in Bangladeshi courts; the specific incidents of temple demolition and property appropriation that have characterized the post-August 2024 period; and the legislative and institutional reforms needed to provide adequate legal protection for Hindu religious properties and institutions in Bangladesh.

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PART SIX

Sacred Spaces and Stolen Ground: Hindu Religious Institutions, Temple Properties, Debottar Endowments, and the Crisis of Legal Protection in Bangladesh

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FOREWORD TO PART SIX

On the 26th of June, 2025, bulldozers operated by Bangladesh Railways demolished a Durga puja mandap in the Khilgaon area of Dhaka. The Bangladesh government described the operation as a routine administrative eviction of unauthorized structures from railway land. Hindu community leaders, rights activists, and the Ministry of External Affairs of India described it as an act of state-sanctioned religious aggression: the destruction of a place of Hindu worship by the machinery of a state that is constitutionally obligated to protect the right of every religious community to maintain its religious institutions. The Indian government spokesperson said, with measured but unmistakable clarity, that it is the responsibility of the interim government of Bangladesh to protect Hindus, their properties and their religious institutions.

That incident, which drew international attention and sharpened the already deep anxieties of Bangladesh's Hindu community, is not an isolated episode. It is the most visible recent manifestation of a legal and institutional crisis that has been building for decades: the absence in Bangladesh of any adequate legal framework for the protection, registration, administration, and legal representation of Hindu religious institutions and their properties. While the Bangladesh Constitution guarantees to every citizen the right to establish and maintain religious institutions, the laws and institutions that would give practical content to that guarantee for the Hindu community are either absent, archaic, or so poorly enforced as to be functionally meaningless. The result is that an estimated forty thousand Hindu temples operate across Bangladesh without adequate legal protection for their properties, their administrations, or their right to exist.

Part Six of this treatise examines this crisis in all its dimensions. It begins with the philosophical and doctrinal foundations of the Hindu law of religious endowments: the ancient concept of Debottar property, the legal personality of the deity as juristic person, and the institution of the Shebait as trustee-manager of sacred properties. It then traces the colonial construction of a legal framework for governing religious endowments in Bengal, the transmission of that framework into the legal systems of Pakistan and Bangladesh, and the specific ways in which the framework has failed. It examines in detail the contemporary crisis of temple property dispossession in Bangladesh, including the role of the Enemy Property Act and the Vested Property Act in legally sanctioning the transfer of Hindu religious properties to the state and to private appropriators. It analyses the specific legal mechanisms through which Hindu religious institutions can currently seek protection in the courts of Bangladesh, the obstacles they face in doing so, and the illustrative case law that reveals both the possibilities and the limits of judicial intervention. It draws on the most recent developments: the wave of temple attacks that began in August 2024

and continued through 2025 and into 2026, the arrest and prosecution of Hindu community leaders including Chinmoy Krishna Das, the demolition controversies, and the international human rights response. And it proposes, in the final chapters of this Part, a comprehensive legislative and institutional reform agenda: a Hindu Religious Institutions and Endowments Act for Bangladesh, modelled on but going beyond the various state-level enactment Acts of India, that would give Hindu religious institutions the legal tools they need to protect their properties, govern their internal affairs, and secure their place in the constitutional order of Bangladesh.

CHAPTER ONE: THE PHILOSOPHY AND DOCTRINE OF THE DEITY AS JURISTIC PERSON

1.1 The Concept of the Juridical Deity in Hindu Legal Philosophy

The Hindu law of religious endowments is built upon one of the most philosophically distinctive concepts in the entire jurisprudential tradition: the idea that a deity, an idol, a god or goddess enshrined in a temple or place of worship, is a legal person, capable of holding property, of suing and being sued, of having rights and obligations enforced through the courts of law. This concept, which the common law courts of colonial India incorporated into the Anglo-Hindu legal framework with remarkable receptiveness, has no precise parallel in Western legal systems, though its functional purpose, the creation of a legal vehicle for perpetual holding and management of property dedicated to religious purposes, has structural analogies in the law of charitable trusts and in certain civil law concepts of the foundation.

The Sanskrit philosophical tradition from which the concept derives understands the relationship between the deity and its material manifestation, the murti or idol in the temple, in terms of the doctrine of divine presence. When an idol is properly consecrated through the Prana Pratishtha ceremony, the deity is understood to be genuinely present in the idol: not merely symbolically represented but actually inhabiting the material form. This doctrine of real divine presence transforms the idol from a mere object into the vehicle of a living divine personality, and it is from this transformation that the legal personality of the deity follows. If the deity is genuinely present in the idol, and if the deity is understood as a being with its own identity, interests, and continuing existence, then it is conceptually natural, within the Hindu philosophical framework, to recognize the deity as capable of the kind of legal status that other legal persons enjoy.

The colonial courts, confronted with the practical problem of how to manage properties dedicated to Hindu religious purposes, found this concept extremely useful. A body of English jurisprudence had already developed the concept of the charitable trust, under which property could be dedicated to a purpose rather than to a person, with trustees holding and managing the property for the benefit of the purpose. The juridical deity concept performed a similar function in the Hindu context: by recognizing the deity as the owner of dedicated property, the colonial courts were able to develop a coherent legal framework for the governance of religious endowments that drew on both the ancient Sanskrit tradition and the English trust law tradition. The deity, as owner, provided the beneficial interest that gave the endowment its legal character.

The Shebait, as manager, provided the human agency that made the endowment practically administrable.

The Banglapedia entry on Waqf, which draws a comparative parallel between Muslim Waqf and Hindu Debottar property, makes the essential point with characteristic concision: a temple is not a juridical person but a deity has a juridical status. This distinction between the temple as a physical structure and the deity as a legal person is fundamental. The temple building can be built, demolished, modified, or relocated without affecting the legal status of the deity that it houses. The deity's legal personality is not dependent on any particular physical structure; it is derived from the religious act of consecration and from the tradition of worship that maintains the deity's presence. This means, in principle, that the demolition of a temple building does not automatically extinguish the legal personality of the deity housed within it, and that the deity's property rights survive the destruction of the physical structure that housed it.

This principle has obvious implications for the contemporary crisis of temple demolition and property appropriation in Bangladesh. If the deity whose Mandap was demolished in Khilgaon in June 2025 retains its legal personality despite the demolition of its physical home, then the property rights associated with that deity's worship, including any land on which the Mandap stood, are not extinguished by the physical act of demolition. The question of whether those property rights can be enforced in the courts of Bangladesh, given the particular circumstances of the Khilgaon case, is a complex one that requires examination of several overlapping legal frameworks. But the philosophical and doctrinal foundation for asserting such rights exists within the Hindu legal tradition itself.

1.2 The Shebait: Theological Servant and Legal Manager

The Shebait is the key institutional figure in the Hindu law of religious endowments. The word Shebait is derived from the Sanskrit word seva, meaning service, and it describes the person whose primary function is to serve the deity: to perform or oversee the rituals of worship, to maintain the physical premises of the temple, and to manage the endowment property that provides the economic foundation for the deity's worship. The Shebait is, in the theological understanding, the earthly representative of the deity, the human minister through whom the divine personality acts in the world of temporal affairs.

The legal character of the Shebait's position has been described by successive courts in India and Bangladesh as difficult to define with precision. B.K. Mukherjee's authoritative work on the Hindu law of religious and charitable trusts, which remains the most comprehensive treatment of the subject, characterizes the Shebait as simultaneously a religious officiant and a legal manager, combining spiritual and temporal functions in a single role that has no exact Western analogue. The Shebait is not a trustee in the strict English law sense, because the trust concept in English law implies a separation between the legal owner and the beneficial owner that does not map neatly onto the Hindu Shebait-deity relationship. The Shebait is not a mere agent of the deity, because the Shebait has independent rights and duties that are not reducible to the execution of another person's instructions. The Shebait is, rather, a unique legal figure whose rights and duties are defined by the specific institutional history of the Hindu endowment tradition and by the

judicial decisions that have developed and applied that tradition over more than a century of litigation.

The Shebait's rights include the right to perform the worship of the deity, the right to manage the endowment property, the right to receive a portion of the endowment income for his maintenance, and in some cases the right to transmit his Shebaitship to his heirs. The Shebait's duties include the duty to perform the worship faithfully, to maintain the endowment property, to account for the income and expenditure of the endowment, and to apply the endowment income solely for the purposes for which it was dedicated. The most important legal limitation on the Shebait's powers is the limitation on alienation: the Shebait cannot, in general, sell, mortgage, or otherwise transfer the endowment property without the permission of the court, because such alienation would defeat the purpose of the dedication. This restriction on alienation is the primary legal protection for the continuity of religious endowments across generations.

The judicial decisions on Shebait alienation of Debottar property span more than a century and reflect a consistent doctrinal development. The principle established by the Privy Council and consistently followed by the courts of India and Bangladesh is that a deity is the perpetual minor in the sense that it requires continuous human management but is itself incapable of alienating its own property; the property vests in the deity but the management is entrusted to the Shebait; and any alienation of the property without the court's authorization is void. The Supreme Court of India has confirmed this principle, holding that all temple property is owned by the deity as a legal person and that the name of the Shebait or government official managing the temple cannot be entered in the property ownership records: only the name of the deity is to appear in the ownership column. This principle is applicable in Bangladesh as well, since the relevant legal tradition was developed by the Privy Council and the Calcutta High Court, whose decisions are part of the judicial heritage that Bangladesh's courts apply.

1.3 The Forms of Hindu Religious Endowment

Hindu religious endowments in Bangladesh take several distinct forms that require separate legal analysis, though they share the common feature of property dedicated to religious or charitable purposes.

The first and most common form is the Debottar endowment, in which property is dedicated absolutely and irrevocably to the service of a specific deity. The property vests in the deity as its legal owner, and the Shebait manages it as the deity's earthly representative. The income from the property is applied to the costs of the deity's worship, including the provision of offerings, the maintenance of the temple premises, the employment of priests and attendants, and the celebration of religious festivals. The Debottar endowment is a perpetual institution: it does not terminate on the death of any human participant, and its property cannot be inherited by any human heir.

The second form is the Sevait endowment, which is similar to the Debottar but is characterized by the more personal nature of the Shebait's relationship with the deity. In some traditions, the Shebait's right to perform the seva of a particular deity is a hereditary right that passes within the

Shebait's family from generation to generation. This hereditary character of Shebaitship creates a close identification between the endowment and the founding family, and it means that disputes about the management of the endowment are often disputes within or between families rather than disputes between unconnected individuals.

The third form is the Dharmottara or dharmasala, an endowment dedicated not to a specific deity but to a more general charitable purpose with a religious character: the maintenance of a dharmasala or rest house for pilgrims, the provision of food for the poor, the support of a school or hospital attached to a temple, or the maintenance of a cremation ground. These endowments may not involve a specific deity as legal owner, and they are governed by the general law of charitable trusts rather than specifically by the Debottar rules.

The fourth form is the Math or monastic institution, an endowment dedicated to the support of a community of religious practitioners, typically ascetics of a particular school or order. The Math is governed by its Mahant, who functions as the head of the monastic community and as the manager of the endowment property. The Mahant's legal status is analogous in some respects to that of the Shebait but has important differences: the Mahant is the head of a community rather than the servant of a specific deity, and the Math's property is understood as belonging to the institution as a whole rather than to any single divine personality.

Each of these forms of endowment presents its own distinctive legal challenges in the contemporary Bangladeshi context, and each requires specific attention in any comprehensive reform of the law governing Hindu religious institutions.

CHAPTER TWO: THE COLONIAL LEGAL FRAMEWORK AND ITS BANGLADESHI INHERITANCE

2.1 The British Encounter with Hindu Religious Endowments

The British colonial administration of Bengal encountered the Hindu law of religious endowments as a complex, locally variable, and practically significant body of law that governed substantial quantities of property and that intersected with the social and political authority of Hindu religious institutions. The colonial response to this encounter was shaped by a combination of administrative pragmatism and ideological preconception that produced a distinctive legal framework whose legacy continues to shape the situation of Hindu religious institutions in Bangladesh today.

The earliest British approach to Hindu religious endowments was to treat them as analogous to English charitable trusts and to apply the same principles of judicial supervision and accountability that English equity courts applied to charitable trustees. This approach was reflected in the Bengal Regulations of the early nineteenth century, which gave civil courts jurisdiction over disputes relating to religious endowments and established the principle that Shebaits and Mahants were accountable to the courts for their management of endowment

properties. This jurisdictional assertion by the colonial state over Hindu religious endowments was itself a significant intervention: it meant that the management of Hindu temples and their properties was subject to a secular judicial authority rather than exclusively to the internal governance mechanisms of the religious community.

The second phase of the British approach was characterized by a gradual retreat from direct involvement in Hindu religious affairs. The controversy over the government's management of certain temple properties, and the growing perception among British officials that involvement in the religious affairs of the Indian population was politically dangerous and theologically inappropriate, led to the Cession of Religious Endowments Act of 1863, which transferred back to the community certain administrative responsibilities for religious institutions that the government had earlier assumed. But this retreat was incomplete and inconsistent: the civil courts retained their jurisdiction over endowment disputes, and the general law of property continued to apply to endowment properties in ways that created ongoing points of contact between the state's legal apparatus and the community's religious institutions.

The third phase was the development of specific regulatory legislation for religious endowments in various parts of British India. The most significant of these were the Charitable Endowments Act of 1890, which applied to all religious and charitable endowments in British India, and the various provincial enactments that developed more specific frameworks for the administration of particular types of religious endowment. The Charitable Endowments Act of 1890 remains in force in Bangladesh today, though its application to Hindu religious endowments is incomplete and inadequate.

The critical point about the colonial legal framework for Hindu religious endowments in Bengal is that it was never completed. Unlike in the Madras Presidency and in several other regions of British India, where specific legislation was enacted to provide comprehensive regulation of Hindu religious institutions, the Bengal Presidency, which is the legal ancestor of Bangladesh, never developed a comprehensive statutory framework for the administration of Hindu temples and endowments. The Madras Hindu Religious and Charitable Endowments Act of 1927, later replaced by the more comprehensive 1951 Act, created an elaborate system of state supervision and support for Hindu religious institutions in the Madras Presidency. No equivalent legislation was ever enacted for Bengal, leaving Hindu religious institutions in what is now Bangladesh without the statutory infrastructure that their counterparts in South India enjoyed.

This historical gap in the colonial legislative programme is enormously consequential for the current situation. It means that Hindu religious institutions in Bangladesh are governed primarily by the general law of property and trusts, supplemented by the principles of the Anglo-Hindu case law on Debottar property and Shebaitship. This is an inadequate basis for governance: it provides no mechanism for the registration of religious institutions, no system for the auditing of their accounts, no specialized tribunal for resolving internal disputes, and no governmental body with specific responsibilities for supporting and protecting religious institutions. The contrast with the comprehensive framework available to Waqf institutions in Bangladesh, which are governed by the elaborate Waqf Ordinance of 1962 and administered by the Waqf Administrator's Office, could not be more stark.

2.2 The Waqf Model and Its Hindu Analogue

The Waqf Ordinance of 1962, enacted under the military regime of Ayub Khan and inherited by Bangladesh at independence, provides a comprehensive legal framework for Muslim religious endowments in Bangladesh. It establishes a system of registration for Waqf properties, creates a Waqf Administrator with broad powers of supervision and intervention, provides for the auditing of Waqf accounts, establishes a specialized tribunal for Waqf disputes, and gives the Waqf Administrator authority to take over the management of Waqfs whose mutawalli, the Muslim equivalent of the Shebait, has defaulted on his management duties.

This Waqf framework provides both a model and a measure for the reform of the law governing Hindu religious endowments in Bangladesh. The model it provides is the institutional infrastructure for comprehensive governance of religious endowments: a registration system that creates a public record of all endowment properties, an administrative body with specialized expertise, supervisory powers and enforcement tools, and a specialized dispute resolution mechanism. The measure it provides is the yardstick of equality: if Muslim religious endowments in Bangladesh are protected by this comprehensive framework, and if the Constitution guarantees equal treatment to all religious communities, then the absence of an equivalent framework for Hindu religious endowments is not merely a practical deficiency but a constitutional failure.

The argument from the Waqf model is particularly compelling because it is grounded not in any theory of external human rights standards but in the internal constitutional logic of Bangladesh itself. Bangladesh's Constitution guarantees equal status and equal right in the practice of all religions. The provision of a comprehensive legal framework for one religious community's endowments and the absence of any equivalent framework for another community's endowments is a concrete and specific inequality that the constitutional guarantee of equal treatment requires to be remedied.

A reformed Hindu Religious Institutions and Endowments Act for Bangladesh should create, drawing explicitly on the Waqf model, an institutional framework for Hindu religious endowments that is at least as comprehensive and at least as well-resourced as the framework provided for Waqf by the 1962 Ordinance. This is not a demand for preferential treatment; it is a demand for equality.

2.3 The Enemy Property Act and the Vested Property Act: A History of Legal Dispossession

No examination of the legal situation of Hindu religious institutions in Bangladesh can proceed without confronting the most consequential and most damaging piece of legislation in the history of minority property rights in Bangladesh: the series of laws, beginning with the Enemy Property Act of 1965 and continuing through the Vested Property Act of 1974, that provided a legal framework for the appropriation of Hindu-owned property by the state and by private occupants acting under the state's authority.

The Enemy Property Act of 1965 was enacted by the government of Pakistan following the India-Pakistan war of that year. It authorized the government to take over and manage the property of persons who had migrated to enemy territory, that is, to India. The practical effect of the Act was to target the property of Hindus who had migrated from East Pakistan to India, a migration that had been proceeding at a significant rate since partition and that accelerated after the communal violence of the 1950s and 1960s. The Act did not explicitly target Hindus; it was framed in the neutral language of enemy property management. But its application was anything but neutral: the vast majority of the property that was taken over under its provisions belonged to Hindus, and the Act was understood by both the administrators who enforced it and the Hindu community that suffered under it as a mechanism of religiously motivated property dispossession.

The Vested Property Act of 1974, enacted by the new government of Bangladesh just three years after independence, renamed and slightly modified the Enemy Property Act framework but retained its essential character. Property that had vested in the state under the Enemy Property Act continued to vest under the Vested Property Act, and additional properties could be added to the vested list under various provisions of the new Act. The property that remained vested, typically managed by local government officials or occupied by political allies of the governing party, generated ongoing patronage and corruption, as Abul Barkat's exhaustive economic analysis in his work on the deprivation of the Hindu minority documents in compelling detail.

For Hindu religious institutions, the Enemy Property Act and the Vested Property Act represented a particular threat because the property of Hindu temples and endowments was vulnerable to inclusion in the vested property lists even when the temple itself was still in active use and the deity was still being worshipped. If the Shebait of a Debottar property had migrated to India, the management of the endowment was effectively without a legally recognized manager, and the property was vulnerable to being listed as vested and occupied by government officials or private encroachers. Even where the temple itself was not directly affected, the agricultural lands and commercial properties that formed the economic base of many endowments were frequently listed as vested and appropriated, depriving the religious institution of the income it needed to maintain its worship and its premises.

The Vested Property Return (Amendment) Act of 2011, enacted after sustained advocacy by civil society organizations and minority rights groups, attempted to address the most egregious aspects of the vested property problem by establishing a mechanism for the return of vested properties to their original owners or their successors. The implementation of this mechanism has been slow, incomplete, and in many cases frustrated by bureaucratic obstruction, political interference, and the resistance of occupants who have no interest in giving up properties they have been enjoying for decades. The 2011 Act has not resolved the vested property crisis; it has, at best, created a legal framework through which some of the damage can be partially repaired in individual cases.

For Hindu religious institutions, the implementation of the 2011 Act has been particularly inadequate. The procedures for identifying and returning vested religious properties are poorly designed, and the Debottar character of a property, which ought to be a powerful argument for its

return since no individual owner migrated, only a human manager, has not been consistently recognized by the implementing authorities as a basis for restoration. A comprehensive reform of the law governing Hindu religious institutions must address the vested property question directly, by providing specific mechanisms for the identification and return of religious endowment properties that were incorrectly listed as vested and for the restoration of effective management to those institutions whose economic base was devastated by the vested property legislation.

CHAPTER THREE: THE CONTEMPORARY CRISIS: TEMPLE ATTACKS, DEMOLITIONS, AND THE FAILURE OF STATE PROTECTION

3.1 The Scale of the Crisis: Documenting the Violence

The crisis facing Hindu religious institutions in Bangladesh in the period from August 2024 through 2025 and into 2026 is not merely a matter of inadequate legal frameworks; it is a matter of ongoing physical violence against places of worship on a scale that constitutes a systematic assault on the religious freedom of an entire community. The documentary evidence for this violence, compiled by multiple independent monitoring organizations, is extensive, detailed, and consistent.

The Bangladesh Hindu Buddhist Christian Unity Council, the country's largest minority rights organization, documented a total of 2,244 incidents of violence against minorities between August 4, 2024 and June 30, 2025. These incidents included 59 attacks on places of worship in the first half of 2025 alone. The Ain o Salish Kendra documented 60 distinct acts of idol vandalism between January and September 2025. The United States Commission on International Religious Freedom's July 2025 Factsheet on Bangladesh cited data from the BHBCOP indicating that in the first quarter of 2025 alone there were 25 attacks on Hindu temples. The (Dhaka Tribune) reported in January 2026 that the BHBCOP's annual review identified 522 incidents of communal violence in 2025, including 95 attacks on places of worship. Between January 1 and January 27, 2026, the organization recorded 42 incidents, including nine attacks on temples and churches.

These numbers represent a staggering volume of violence against sacred sites. In a single year, dozens of Hindu temples, mandirs, and shrines were attacked, damaged, or destroyed across Bangladesh. The geographical distribution of the violence was nationwide: attacks were documented in Gaibandha, Kushtia, Netrokona, Gazipur, Jamalpur, Satkhira, Jhenaidah, Nilphamari, Manikganj, Munshiganj, Tangail, Faridpur, Chittagong, Sylhet, Khulna, and many other districts. The specific incidents documented include arson at a temple in Gaibandha, theft of CCTV equipment and vandalism in Kushtia, damage to idols in Netrokona, Gazipur, Jamalpur, Satkhira, Jhenaidah, Nilphamari, and Manikganj in September 2025 alone, and the destruction of eleven deities in Tangail and Radha-Krishna idols in Faridpur in November 2025.

The pattern of these attacks reveals features that distinguish them from random acts of vandalism or individual criminality. Many attacks were triggered by social media posts that alleged

desecration of Islamic religious materials by Hindus, allegations that were in several documented cases subsequently shown to be false, fabricated, or attributable to individuals other than those accused. The March 2025 attack in Sakhipur, Tangail, in which a mob identified as Towhidi Janata attacked a Hindu home following a Facebook comment and publicly burned an image of the goddess Lakshmi, followed exactly this pattern. The May 2025 attack on the Hindu village of Daharmasihati in Abhaynagar, Jashore, in which an Islamist mob of hundreds looted, vandalized, and set fire to eighteen homes, is an example of an attack whose scale and organization suggests something more than spontaneous communal violence.

The UK Home Office's Country Policy and Information Note on religious minorities in Bangladesh, published in June 2025, acknowledges the scale of the violence while noting that police have in some cases arrested perpetrators. But it also acknowledges that police have in some cases been accused of apathy during attacks against religious minorities, that some police were allegedly present during attacks on Sufi shrines without intervening, and that the broader pattern of impunity for anti-minority violence is a significant concern.

3.2 The Khilgaon Demolition: A Case Study in State Action Against Hindu Religious Institutions

The demolition of the Kali Mandir Mandap in the Khilgaon area of Dhaka by Bangladesh Railways on June 26, 2025 deserves extended analysis as a case study in the intersection of state action, property law, religious freedom, and minority rights. The facts of the case, as reported by multiple news outlets and as stated in the official Bangladesh government press note, are relatively straightforward, though their legal interpretation is deeply contested.

In October 2024, during the Durga Puja celebrations, the local Hindu community erected a temporary puja mandap on land owned by Bangladesh Railways. The community reportedly obtained permission from the Railway authorities for this temporary structure on the condition that it would be removed after the conclusion of the puja celebrations. After the puja was over, the community declined to remove the mandap and instead installed a Kali idol, thereby transforming the temporary puja structure into what appears to have been intended as a more permanent place of worship. On June 24 and 25, 2025, Bangladesh Railways issued notices requiring the removal of all unauthorized structures on the relevant stretch of railway land. On June 26, following what the government described as due process, Bangladesh Railways proceeded to remove all unauthorized structures, including the mandap, with the participation of the local Hindu community in immersing the idol in the nearby Balu River with due reverence.

The Bangladesh government's account of the incident emphasizes the legality and the proportionality of the railway authority's action: the land belonged to Railways, the structure had no permission, the community had agreed to remove it, and the eviction was part of a general land-clearing operation that affected all unauthorized users of the railway land, not just the Hindu community. The Indian government's account emphasizes a different set of facts: extremists had been demanding the demolition of the temple, the government gave in to their demands rather than protecting the minority community's place of worship, and the destruction

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of a Hindu religious icon, even one that was installed without formal permission, is an act that sends a message of hostility to the entire Hindu community.

The legal analysis of this incident is genuinely complex, and it illustrates several dimensions of the broader legal problem that Part Six is addressing. First, the incident reveals the absence of any legal mechanism for regularizing the de facto use of public land by Hindu religious institutions. Hindu temples and shrines across Bangladesh, particularly in urban areas, are often located on land whose ownership is ambiguous or whose use rights have never been formally documented. The absence of a registration system for Hindu religious institutions means that many such institutions have no legal documentation of their right to use the land they occupy, which makes them vulnerable to exactly the kind of administrative action that the Khilgaon mandap experienced. Second, the incident reveals the absence of any procedural protection specifically designed to ensure that the removal of Hindu religious structures is handled with appropriate sensitivity to the religious significance of what is being destroyed. The government's account emphasizes that the idol was immersed with due reverence, but the Hindu community's experience of the event was one of violation and loss, and the political message sent by the demolition, whatever its strict legal justification, was one that undermined the community's sense of security and belonging.

Third, and most importantly, the incident reveals the absence of any regulatory framework that would enable the local Hindu community to negotiate with the railway authority from a position of legal recognized rights rather than mere tolerance. If there had been a comprehensive Hindu Religious Institutions and Endowments Act in place, the community might have been able to register the mandap as a recognized religious institution, apply to have its use of the railway land regularized through a formal permission or lease, and receive notice of and the opportunity to contest any proposed eviction through a legally defined procedure. The absence of such a framework left the community legally exposed, dependent on the good will of the railway authority rather than on legally recognized rights.

3.3 The Chinmoy Krishna Das Case: Religious Leadership Under Persecution

The arrest, prosecution, and continued detention of Chinmoy Krishna Das Brahmachari is a legal and political episode that illuminates the precariousness of Hindu religious leadership in contemporary Bangladesh and the use of the criminal justice system as an instrument of intimidation against Hindu community advocates. The case requires examination both for what it reveals about the situation of Hindu religious leaders and for what it tells us about the use of legal tools, specifically sedition charges and bail denials, to suppress legitimate religious and community advocacy.

Chinmoy Krishna Das served as a spokesperson for the Bangladesh Sammilita Sanatani Jagran Jote, a Hindu community advocacy organization that organized public rallies and press events calling attention to violence against the Hindu community and demanding legal protection for minority rights. At a public rally in Chittagong on October 25, 2024, he was the main speaker, addressing a large gathering of Hindu men and women with messages about the community's determination to remain in Bangladesh and to claim its constitutional rights. A sedition case was

filed against him on August 31, 2024, in connection with allegations that he had hoisted a saffron flag at a public event, an act characterised by the filing police as seditious.

He was arrested at Dhaka's Hazrat Shahjalal International Airport on November 25, 2024, while travelling to Chittagong. He was denied bail by the court on November 26, 2024, and sent to jail. On December 3, the bail plea hearing was postponed further to January 2, 2025, because no lawyer appeared on his behalf, the absence being explained by fears of threat and pressure from a politically motivated group within the legal profession. This extraordinary situation, in which a person charged with an offence is unable to obtain legal representation because lawyers fear to take the brief, is itself a profound indictment of the state of minority protection in Bangladesh's legal system.

On April 30, 2025, he was granted bail by the High Court Division. But the Students Against Discrimination, an organization associated with the August 2024 uprising, held rallies demanding cancellation of the bail and a ban on ISKCON. Justice Md Rezaul Haque of the Appellate Division subsequently halted the bail, leaving him in continued detention. He was then further implicated as the prime accused in a murder charge related to events that occurred on November 26, 2024, when demonstrators gathered at the Chittagong court premises to protest his bail denial and a lawyer was killed in the ensuing violence. The charge sheet submitted on July 1, 2025 named him as the prime accused despite the fact that he was in police custody when the violence occurred, a circumstance that makes his direct participation in the alleged murder physically impossible and that raises serious questions about the integrity of the investigation.

The Chinmoy Krishna Das case has several distinct legal dimensions that deserve examination. First, the sedition charge itself: the use of sedition law against a person who organized public rallies calling for equal constitutional rights for the Hindu minority raises serious questions about the constitutionality of the charge. Article 39 of the Bangladesh Constitution guarantees freedom of thought, conscience, and speech, subject to reasonable restrictions imposed by law in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality, and the prevention of contempt of court. The argument that organizing public rallies calling for minority rights constitutes sedition must overcome the Constitution's guarantee of freedom of speech and the right to peaceful assembly.

Second, the use of bail denials as a mechanism of pretrial detention in politically sensitive cases raises questions about the independence and impartiality of the courts. The pattern of the Chinmoy Krishna Das case, in which bail was denied at the trial court level, granted by the High Court Division, and then immediately challenged and halted by the Appellate Division in response to political pressure from the Students Against Discrimination, suggests that the bail decision process was influenced by political factors external to the legal merits. This is inconsistent with the constitutional guarantee of the right to fair trial and with the basic requirements of an independent judiciary.

Third, the murder charge against Chinmoy Krishna Das for events that occurred while he was in custody is, if the factual account is accurate, a serious abuse of process. Implicating a person in a criminal offence for events that occurred while they were in the physical custody of the state is

an affront to elementary principles of criminal law and due process. The reliance on confessional statements made under custody, which investigators themselves acknowledge is the primary basis for the charge, invokes the well-documented and widely acknowledged problem of coerced confessions in Bangladesh's criminal justice system.

The Chinmoy Krishna Das case is significant not merely as an episode in the life of one individual but as a test case for the proposition that Hindu community leaders in Bangladesh can engage in lawful advocacy for their community's constitutional rights without being criminally prosecuted. If the answer to that test is no, then the constitutional guarantee of freedom of expression and assembly is meaningless for the Hindu community in Bangladesh.

CHAPTER FOUR: THE LEGAL PERSONALITY OF THE DEITY IN BANGLADESHI COURTS

4.1 The Reception of the Deity Personality Doctrine in Bangladeshi Jurisprudence

The doctrine that a Hindu deity is a juristic person capable of holding property and of suing and being sued through its human representative, the Shebait or Mohanta, has been part of the legal heritage of Bangladesh since its formation in 1971. The doctrine was developed by the Privy Council, which was the supreme judicial authority for the courts of British India, and by the High Court of Judicature at Calcutta, which was the superior court for Bengal and whose decisions continue to be highly persuasive in the courts of Bangladesh. The Banglapedia entry on Waqf, which is the authoritative encyclopaedic reference on Bangladeshi law, specifically confirms the doctrine: a temple is not a juridical person but a deity has a juridical status, and both the temple and the deity can sue and be sued through the Shebait or Mohanta.

The practical implications of this doctrine for the contemporary situation of Hindu religious institutions in Bangladesh have been underexplored. The doctrine means, in principle, that a Hindu deity whose temple has been attacked and damaged has standing to bring a civil action for damages and injunctive relief through its Shebait. It means that a deity whose Debottar properties have been wrongfully included in the vested property lists has standing, through its Shebait, to challenge that listing in the courts. It means that a deity whose place of worship has been unlawfully demolished has standing, through its Shebait, to seek judicial review of the demolition decision and to claim compensation for the loss.

These legal possibilities have not been systematically exploited, partly because the Hindu community in Bangladesh has limited access to legal resources, partly because lawyers who specialize in this area of law are few, and partly because the outcome of litigation against government agencies or politically connected private occupants is uncertain and potentially risky for the litigants. But the theoretical legal framework exists, and it represents a resource that reform-minded lawyers and community advocates can draw upon in developing litigation strategies that advance the protection of Hindu religious institutions.

The Indian Supreme Court's confirmation in 2025 that all temple property is owned by the deity as a legal person and that the deity's name alone should appear in the ownership column of property records, as reported by JETIR in February 2025, provides contemporary judicial authority for the deity personality doctrine that is directly relevant to the Bangladeshi context. While Indian Supreme Court decisions are not binding in Bangladesh, they are highly persuasive, particularly on questions of Hindu personal law where the two countries share a common legal heritage. The 2025 Indian decision provides a strong basis for arguing that the same principles should be applied in Bangladesh's courts.

4.2 The Problem of Standing: Who Can Represent the Deity in Court?

The juristic personality of the deity creates both an opportunity and a practical problem for the protection of Hindu religious institutions in Bangladesh. The opportunity is that the deity's legal personhood provides a basis for legal actions to protect the religious institution's property and interests. The practical problem is that the deity can only act through a human representative, and the question of who is entitled to represent the deity in a given case is often itself a contested legal question.

In the classical law, the Shebait is the deity's representative. But what happens when there is a dispute about who is the rightful Shebait? What happens when the Shebait has migrated to India and there is no living Shebait in Bangladesh? What happens when the temple has been occupied by encroachers and the community of worshippers who might otherwise constitute the deity's representative body has been displaced? These questions do not have clear answers in the current law, and they represent practical obstacles to the use of the deity personality doctrine as a tool for protecting Hindu religious institutions.

The reform of the law should address the representation problem directly. A reformed Hindu Religious Institutions and Endowments Act should provide that, in the absence of a recognized Shebait, the deity may be represented in legal proceedings by: a committee of worshippers nominated by the relevant Hindu community; a recognized Hindu religious organization with an established presence in the relevant area; or, as a measure of last resort, a court-appointed officer with specific responsibilities for protecting the deity's interests. This provision would ensure that the legal personhood of the deity does not become a dead letter in cases where the human representative structure has broken down.

The Madras High Court's jurisprudence on temple property alienation, which has been extensively developed since the 1927 Act and which was most recently confirmed in the January 2026 decision restoring 3.93 acres of temple land that had been illegally sold in 1994, provides a model for the kind of active judicial oversight of religious endowment management that Bangladesh's courts should be empowered to exercise. The Madras High Court in that decision underscored that temple lands enjoy a special status, held in trust for the deity and devotees, and cannot be treated as disposable private property, and confirmed that the trustees and officials who manage temple property are custodians, not owners, and must preserve temple assets for future generations. The same principles, articulated by a Division Bench of Justice S.M. Subramaniam and Justice K. Rajasekar in an encroachment case, are that encroachments upon

temple property by tenants is a serious legal issue that demands stringent enforcement of property laws and respect for religious sentiments, and that judicial intervention, guided by established legal principles, is crucial in resolving disputes and upholding the rule of law.

These principles are entirely applicable in Bangladesh, and their application would provide a significant enhancement of the legal protection available to Hindu religious institutions whose properties have been encroached upon, misappropriated, or wrongfully listed as vested.

CHAPTER FIVE: INTERNATIONAL HUMAN RIGHTS LAW AND THE PROTECTION OF HINDU RELIGIOUS INSTITUTIONS

5.1 Article 18 of the ICCPR and the Right to Maintain Religious Institutions

The International Covenant on Civil and Political Rights, ratified by Bangladesh, provides in Article 18 that everyone shall have the right to freedom of thought, conscience and religion, and that this right shall include freedom, either individually or in community with others and in public or private, to manifest religion or belief in worship, observance, practice and teaching. Article 18(2) specifically prohibits coercion that would impair freedom to have or adopt a religion or belief, and Article 18(3) allows limitations on the manifestation of religion only where such limitations are prescribed by law and are necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others.

The UN Human Rights Committee, in its General Comment No. 22 on Article 18, which remains the authoritative interpretation of this provision, states that the concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship. The General Comment also states that the freedom to manifest religion comprehends the right of communities to maintain places of worship, and that states parties must ensure that communities can maintain their religious institutions free from arbitrary government interference.

Applied to the situation of Hindu religious institutions in Bangladesh, these provisions create clear international legal obligations. The state of Bangladesh is obligated to ensure that Hindu communities can maintain their places of worship free from violence, vandalism, and arbitrary administrative action. The systematic failure to prevent attacks on Hindu temples, the use of administrative action to demolish Hindu religious structures, and the absence of a legal framework that gives Hindu religious institutions effective protection for their property rights are all potentially inconsistent with Bangladesh's obligations under Article 18 of the ICCPR.

The Human Rights Committee's General Comment No. 22 further provides that states may not permit the discriminatory treatment of religious groups, including discrimination in the allocation of resources or legal frameworks for different religious communities. The disparity between the comprehensive Waqf Ordinance that governs Muslim religious endowments and the absence of

any equivalent framework for Hindu religious endowments is a concrete example of exactly the kind of discriminatory allocation of legal resources that General Comment No. 22 prohibits.

5.2 The UN Declaration on Minorities and Its Application to Hindu Bangladesh

The United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by the General Assembly in 1992, provides in Article 2 that persons belonging to minorities have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination. Article 4 requires states to take measures to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.

The UN Declaration on Minorities also specifically addresses the protection of minority religious institutions. Article 2(4) provides that minorities have the right to establish and maintain their own associations. Read in conjunction with Article 2(1)'s guarantee of the right to enjoy their own culture and practise their own religion, this provision requires states to ensure that religious minorities can establish and maintain their religious institutions, including temples, endowments, and religious organizations. The absence of a legal framework that effectively protects Hindu religious institutions in Bangladesh is inconsistent with the obligations that the Declaration creates.

The Jus Corpus analysis of international law and the safety of religious minorities in Bangladesh, published in early 2026, provides a comprehensive examination of the international legal framework applicable to the situation of Bangladesh's Hindu community, including the obligations under the UDHR, ICCPR, ICESCR, CERD, and the UN Declaration on Minorities. Its conclusion that there is a significant gap between Bangladesh's international legal obligations and the actual treatment of its Hindu minority is well-founded and directly relevant to the specific question of religious institution protection that this Part addresses.

5.3 The Role of the Universal Periodic Review and Special Procedures

Bangladesh is subject to the Universal Periodic Review process of the UN Human Rights Council, under which states' compliance with their human rights obligations is reviewed periodically by the Council. Bangladesh's most recent UPR reviews have included recommendations from various states and civil society organizations regarding the protection of religious minorities, including specific recommendations about the prevention of violence against Hindu temples and the reform of laws that discriminate against minority communities.

The Special Rapporteur on Freedom of Religion or Belief, a UN human rights mechanism whose mandate encompasses the protection of places of worship, has received communications about the situation of Hindu religious institutions in Bangladesh and has engaged with the Bangladesh government on these issues. The Special Rapporteur's jurisprudence on the protection of places of worship is relevant to the Bangladeshi situation: it establishes that states have an obligation to investigate and prosecute attacks on places of worship, to prevent the destruction of religious

sites through administrative or other action, and to ensure that all religious communities have equal access to legal protection for their religious institutions.

The practical utility of these international mechanisms for the protection of Hindu religious institutions in Bangladesh depends on the extent to which they create sufficient political pressure on the Bangladesh government to change its behaviour. The historical record suggests that this international pressure is real but limited: the Bangladesh government has consistently denied allegations of systematic discrimination against the Hindu minority, and its responses to international criticism have typically involved denials of the scale of the problem and assertions of constitutional commitment to religious freedom. Nevertheless, international scrutiny contributes to the political environment within which reform advocates operate, and the documentation of Bangladesh's international obligations provides a basis for domestic legal arguments that the state's failure to protect Hindu religious institutions violates not only the Bangladesh Constitution but also the international treaty obligations that Bangladesh has freely undertaken.

CHAPTER SIX: THE REGISTRATION AND GOVERNANCE OF HINDU RELIGIOUS INSTITUTIONS

6.1 The Case for a Registration System

The most fundamental reform needed for the protection of Hindu religious institutions in Bangladesh is the establishment of a comprehensive registration system. Such a system would create a public legal record of all Hindu temples, endowments, religious organizations, and associated properties, giving each registered institution a legal identity that it can assert in dealings with government authorities, in litigation, and in relations with third parties.

The absence of a registration system means that many Hindu religious institutions in Bangladesh exist, in a legal sense, in a kind of limbo. They may have occupied a particular piece of land for generations, maintaining religious worship without interruption for decades or centuries, but they have no documented legal right to that occupation. They may hold endowment property without any formal legal documentation of the endowment, relying instead on local knowledge and tradition. They may be subject to internal governance disputes with no legal mechanism for resolving those disputes other than the general civil courts, which are ill-equipped to apply the specific principles of Hindu endowment law.

A registration system would address all of these problems. Registered institutions would have documented legal identities. Registered endowment properties would be listed in a public register that would provide evidence of their Debottar character and that would make it more difficult for encroachers or government officials to claim that the property is unoccupied or unclaimed. The registration process itself would generate documentation of the institution's history, its property holdings, its governance arrangements, and the community it serves, documentation that would be invaluable in any subsequent legal proceedings.

The Kerala High Court's suggestion in January 2026, in the context of the Sabarimala gold theft case, that the state of Kerala should consider enacting a Kerala State Devaswom Property Protection and Preservation Act with specific penal provisions to curb misappropriation of temple assets, reflects the same insight: that the protection of Hindu religious institutions requires specialized statutory machinery, not merely the general law. The High Court's observation that many cases are coming and that it shall have the duty to protect the Devaswom properties for the interest of believers, and that there must be an enactment, is directly applicable to the Bangladeshi situation.

6.2 The Governance of Hindu Religious Institutions: Managing Committees and Their Legal Status

Most Hindu religious institutions in Bangladesh are managed not by a hereditary Shebait but by a managing committee of community members who collectively take responsibility for the institution's administration. These managing committees, while universally used in practice, have no specific legal recognition in Bangladeshi law. They are not incorporated bodies, they have no formal legal capacity to hold property in their own names, and their authority to act on behalf of the institution is not legally defined.

This absence of legal recognition creates several practical problems. A managing committee that wants to enforce the institution's property rights in court cannot sue in its own name; it must either identify a Shebait to sue in the deity's name or bring the action through some other legal vehicle. A managing committee that wants to open a bank account or enter into a contract on behalf of the institution faces obstacles because the institution has no recognized legal capacity. A managing committee that faces a challenge to its authority from a rival group within the community has no legally defined procedure for resolving the dispute.

A reformed Hindu Religious Institutions and Endowments Act should provide specifically for the legal recognition of managing committees, giving them the legal capacity to hold property in trust for the relevant deity or institution, to sue and be sued in their own name, to enter into contracts, and to perform all other acts necessary for the effective management of the institution. The Act should also provide a legally defined procedure for the constitution of managing committees, the election or appointment of their members, the resolution of disputes about committee membership or authority, and the audit of committee accounts.

The Waqf model again provides a useful reference: the Waqf Ordinance specifies the governance arrangements for Waqf institutions in considerable detail, providing for the appointment and accountability of Mutawallis and the oversight of their management by the Waqf Administrator. An equivalent framework for Hindu religious institutions would provide a comparable level of institutional clarity and accountability.

6.3 Women's Participation in the Governance of Hindu Religious Institutions

The governance of Hindu religious institutions, like the broader governance of Hindu communities in Bangladesh, has historically been dominated by men. The managing committees

of most Hindu temples are composed exclusively or predominantly of men, and women's participation in the formal governance of religious institutions has been severely limited. This gender exclusion is not mandated by the Dharmasastra tradition itself, which does not prohibit women from participating in the management of temple affairs, but it reflects the broader patriarchal norms of the Hindu community.

A reformed Hindu Religious Institutions and Endowments Act should specifically address gender inclusion in the governance of Hindu religious institutions. The Act should require that managing committees of registered institutions include a specified minimum proportion of women members, drawing on the precedent of the 33 per cent reservation for women in local government bodies established in Bangladesh. This requirement would not override the religious functions of the Shebaitship or the priesthood, which may legitimately involve considerations of religious tradition and practice; it would address the governance functions of managing committees, which are essentially administrative in character and for which there is no principled reason why women should be excluded.

This provision would also contribute to the broader project of women's empowerment within the Hindu community in Bangladesh, complementing the reforms to inheritance law, guardianship law, and maintenance law advocated in other parts of this treatise.

CHAPTER SEVEN: THE PROPOSED HINDU RELIGIOUS INSTITUTIONS AND ENDOWMENTS ACT FOR BANGLADESH

7.1 The Scope and Purpose of the Proposed Act

A Hindu Religious Institutions and Endowments Act for Bangladesh should have as its primary purpose the provision of a comprehensive legal framework for the protection, governance, and support of Hindu religious institutions and their associated properties. Its provisions should address the full range of issues identified in the preceding chapters of this Part: the registration of religious institutions, the governance of managing committees, the protection of endowment properties, the legal representation of deities in judicial and administrative proceedings, the supervision and accountability of Shebaits and managing committees, the resolution of disputes, and the specific legal mechanisms for addressing vested property claims and the recovery of religious properties that have been unlawfully appropriated.

The Act should apply to all Hindu temples, shrines, endowments, religious organizations, and other Hindu religious institutions, regardless of their size, the nature of their property holdings, or the specific theological tradition they represent. It should also apply, with appropriate modifications, to Buddhist, Jain, and Sikh religious institutions, which face similar legal challenges and which would benefit from a comparable institutional framework. This broader scope would make the Act a comprehensive framework for the protection of all non-Muslim religious minorities' religious institutions, rather than a law specifically for Hindus, which would

have the additional political advantage of framing the reform as a general minority rights measure rather than a specifically Hindu rights measure.

Chapter I: Preliminary. Including the statement of purpose, the definition of key terms including Hindu religious institution, endowment property, Debottar property, Shebait, managing committee, and the administrative body established by the Act. The Act should explicitly state that its purpose is to give effect to the constitutional guarantee that all religious communities have the right to establish and maintain their religious institutions, and to the international human rights obligations of Bangladesh in respect of freedom of religion and the protection of minority rights.

Chapter II: The Hindu Religious Institutions Board. The Act should establish a permanent administrative body, the Hindu Religious Institutions Board, staffed by officers with specialized expertise in Hindu personal law, religious endowment administration, and the governance of religious institutions. The Board should be a statutory body with legal capacity to sue and be sued, to hold property, and to enter into contracts. Its members should include both government officials and representatives of the Hindu community, with a guaranteed minimum representation of women. The Board should have the following functions: maintaining the Register of Hindu Religious Institutions; supervising the governance of registered institutions; receiving and investigating complaints about the management of registered institutions; initiating proceedings for the removal of defaulting managers; providing technical assistance and advice to managing committees; and representing the interests of Hindu religious institutions before government agencies and courts.

Chapter III: Registration. Every Hindu religious institution should be required to register with the Board within a specified period of the Act's commencement. Registration should create a legal record of the institution's identity, its property holdings, its governance arrangements, and the community it serves. The registration process should not be burdensome: the Board should provide assistance to institutions that lack the administrative capacity to prepare their own registration applications. A failure to register should not, however, extinguish the legal status of any existing institution; the registration requirement should be a positive obligation whose fulfilment generates legal benefits, not a precondition for legal existence.

Chapter IV: Governance. Registered institutions with endowment properties above a specified threshold should be required to establish formally constituted managing committees with legally specified compositions, including a minimum proportion of women members. The Act should provide for the election or appointment of managing committee members, the term and conditions of their membership, the procedure for their removal for misconduct, and the accountability mechanisms to which they are subject.

Chapter V: Protection of Endowment Properties. The Act should provide specific legal protections for registered endowment properties. These protections should include: a restriction on the alienation of Debottar properties without the Board's prior approval and, in appropriate cases, the court's authorization; a prohibition on the use of endowment properties for purposes other than the purposes of the relevant endowment; an obligation to maintain endowment

properties in good repair; and a right of the Board to inspect registered properties and to take remedial action where they are found to be neglected or misused. The Act should also create a specific legal mechanism for challenging the inclusion of religious institution properties in the vested property lists, with a rebuttable presumption that a property in continuous religious use at the time of the Enemy Property Act of 1965 was not validly vested.

Chapter VI: The Deity's Legal Status. The Act should specifically confirm that a Hindu deity, enshrined in a registered religious institution, has the legal status of a juristic person for all purposes, including the capacity to hold property, to sue and be sued, and to be represented in legal proceedings by its Shebait, its managing committee, or in the absence of these, by the Board. The Act should provide that the deity's property rights are not extinguished by the death of any human representative, the destruction of the physical structure housing the deity, or any administrative action purporting to terminate the institution's use of a particular piece of land.

Chapter VII: Dispute Resolution. The Act should establish a specialized dispute resolution mechanism for disputes relating to the management of registered institutions, the composition and authority of managing committees, the accounting for and management of endowment property, and the rights of Shebaits. This mechanism should be designed to be accessible to persons and communities who lack the resources to pursue litigation in the ordinary civil courts: it should be informal in procedure, low in cost, and staffed by adjudicators with specific expertise in Hindu endowment law.

Chapter VIII: Offences and Penalties. The Act should create specific criminal offences for the misappropriation of endowment property, for the destruction or damage of registered religious institutions, for interference with the religious functions of registered institutions, and for the intimidation of managing committee members or religious leaders in connection with their institutional functions. These offences should carry penalties that are significantly more severe than those available under the general criminal law, reflecting the specific harm to community rights and constitutional freedoms that attacks on religious institutions cause.

Chapter IX: Relationship to Other Laws. The Act should specify its relationship to other relevant laws, including the Waqf Ordinance, the Charitable Endowments Act of 1890, the Guardians and Wards Act, the general law of property, and the vested property legislation. It should provide that in case of conflict between the Act's provisions and the provisions of other laws, the Act's provisions shall prevail in respect of registered Hindu religious institutions.

Chapter X: Transitional Provisions and Review. The Act should provide for a transition period during which existing institutions can complete their registration, a review mechanism to assess the Act's implementation after five years, and a process for recommending amendments in light of the experience of implementation.

CHAPTER EIGHT: THE JURISPRUDENCE OF SACRED SPACE: PHILOSOPHICAL AND THEORETICAL PERSPECTIVES

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8.1 Space, Sacredness, and Legal Recognition

The question of how legal systems should treat sacred spaces, places that communities understand as invested with special religious significance and that serve as the focal points of community worship and identity, is one that has occupied legal theorists, anthropologists, and theologians in the postcolonial context with increasing urgency. The destruction of a temple or shrine is not equivalent to the destruction of an ordinary building; it is an assault on the community's religious identity, on the material expression of its sacred traditions, and on the spatial markers that locate the community in the physical landscape of its homeland.

This understanding of sacred space as a category that demands special legal treatment is not limited to the Hindu tradition. The UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage recognizes that intangible cultural heritage, including the practices and rituals associated with sacred spaces, requires specific legal protection. The UN Declaration on the Rights of Indigenous Peoples recognizes that indigenous peoples have the right to maintain, protect, and have access in privacy to their religious and cultural sites. The ICCPR, as interpreted by the Human Rights Committee, requires states to protect places of worship from arbitrary destruction and to ensure that religious communities can maintain their sacred sites.

The Hindu conception of sacred space adds a specifically theological dimension to these general human rights concerns. In Hindu philosophy, the sacred space of the temple is not merely a building used for religious purposes; it is a locus of divine presence, a place where the boundary between the human and the divine is especially permeable, and where the community can encounter the sacred in its most concentrated form. The concept of Tirtha, the sacred crossing place, the ford where the human passes into the divine, captures this understanding. A Tirtha is not merely an important place; it is a qualitatively different kind of place, a location whose sacredness is understood as intrinsic and permanent, not as a matter of social construction or contingent human designation.

This theological understanding of sacred space has legal implications that are rarely fully engaged in the legal literature on religious freedom. If a sacred space is not merely a building used for religious purposes but a place of intrinsic and permanent sacredness, then its destruction is not merely a property loss; it is a spiritual harm of a fundamentally different character from any merely economic injury. The loss of a temple that has been worshipped in for five hundred years is not compensable in money; it is an irreversible spiritual loss for the community that has maintained that worship. Legal systems that treat the destruction of religious institutions as merely a property matter, amenable to compensation through damages or replacement with a new building, fail to capture the distinctive harm that sacred space destruction inflicts.

A reformed legal framework for the protection of Hindu religious institutions in Bangladesh should incorporate this understanding of sacred space into its remedial provisions. Where a registered religious institution is unlawfully destroyed or damaged, the remedy should not be limited to the market value of the building or the replacement cost of the idol. It should include recognition of the irreversible spiritual and community harm caused by the destruction, and

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should require the restoration of the sacred site as far as possible rather than merely compensating its loss in money.

8.2 The Postcolonial Critique of Religious Property Law

The postcolonial critique of the legal frameworks governing religious property in South Asia reveals dimensions of the problem that conventional doctrinal legal analysis cannot fully capture. Scholars including Rajeev Bhargava, Akeel Bilgrami, and Rochana Bajpai have examined the ways in which the legal treatment of religious institutions and their properties in India and Bangladesh reflects and reproduces the colonial ordering of religious communities, in which some communities' institutions were more legally recognised and more institutionally supported than others.

In the Bangladeshi context, the postcolonial critique takes a specific form: the legal framework inherited from the colonial period and not reformed since independence systematically disadvantages Hindu religious institutions relative to Muslim religious institutions, not because of explicit discriminatory intent but because the reform of the Waqf framework was pursued and completed while the equivalent reform of the Hindu endowment framework was never undertaken. This asymmetry reflects the political priorities of successive governments in Pakistan and Bangladesh, which have been responsive to the demands and interests of the Muslim majority community while neglecting or actively disadvantaging the Hindu minority.

The postcolonial critique also draws attention to the colonial origins of the particular form of the juridical deity doctrine that was incorporated into the Anglo-Hindu legal framework. The Privy Council's development of this doctrine was not a neutral exercise in comparative jurisprudence; it was shaped by the colonial context in which it occurred, including the British government's interest in maintaining social order by respecting the existing property arrangements of Hindu communities, the preference of colonial courts for certain forms of textual authority over others, and the interpretive framework of English equity law within which the doctrine was developed. This colonial genealogy does not make the juridical deity doctrine invalid or unsuitable for contemporary use; but it does mean that the doctrine should be critically examined and adapted rather than simply applied as if it were the timeless expression of Hindu legal philosophy.

The specific adaptation that the postcolonial critique suggests is the development of a more community-centred understanding of religious institution governance, one that recognizes the collective character of the Hindu community's relationship with its sacred sites rather than focusing exclusively on the individual Shebait's legal authority. The deity personality doctrine, in its colonial legal form, tends to centre the legal framework on the individual Shebait as the deity's representative, which can create a situation where the Shebait's individual interests dominate over those of the worshipping community. A reformed framework should instead recognize the worshipping community itself as having legal rights in relation to the religious institution, supplementing and in some respects limiting the authority of the individual Shebait.

This community-centred approach resonates with the Gandhian tradition of village-level communal self-governance and with the more recent theoretical work on communitarian

conceptions of rights that has challenged the dominant liberal individualist framework. It also has practical support in the actual governance arrangements of most Hindu religious institutions in Bangladesh, which are managed by community committees rather than individual Shebaits, a reality that the reformed legal framework should recognize and support rather than ignoring in favor of the classical individual Shebait model.

CHAPTER NINE: POLITICAL ANALYSIS AND THE PROSPECTS FOR REFORM

9.1 The Politics of Temple Protection in Bangladesh

The political dynamics surrounding the protection of Hindu religious institutions in Bangladesh are shaped by several intersecting forces that have consistently worked against effective protection and that show no signs of easy resolution in the current political environment.

The first of these forces is the ongoing communal politics of Bangladesh, in which the Hindu minority's position is determined not primarily by law but by the balance of communal power. The Hindu community's temples and religious institutions are vulnerable not primarily because the law fails to protect them, though it does, but because the broader social and political environment tolerates attacks on those institutions with a degree of impunity that law alone cannot address. The pattern of cyclical communal violence, in which attacks on Hindu temples spike during periods of political transition or communal tension, suggests that the protection of Hindu religious institutions is fundamentally a political problem as much as a legal one, and that legal reform, while necessary, is not sufficient.

The second force is the specific political economy of religious institution management in Bangladesh. Hindu temples and endowments control significant quantities of property, and this property is the object of predatory interest from various quarters: local political figures who see temple land as a resource for patronage distribution, property developers who see it as a commercial opportunity, and private individuals who have been occupying temple land for decades and who have no interest in seeing their occupation legally challenged. These interests create organized political opposition to any legal reform that would strengthen the property rights of Hindu religious institutions.

The third force is the asymmetry of political organization between the Hindu community's advocates for reform and the various interests that oppose it. The Hindu Law Reform Council and the Hindu Buddhist Christian Unity Council are civil society organizations with limited resources and political connections. The interests that benefit from the current legal void are embedded in local political structures, in government bureaucracies, and in the social networks of major political parties. This organizational asymmetry makes it difficult to translate the moral and legal case for reform into effective political action.

Against these forces, the reform advocates have several resources. The international attention to the situation of Bangladesh's Hindu minority since August 2024, which has included statements

by the governments of India, the United States, the United Kingdom, and the European Union, and documentation by USCIRF, Amnesty International, (Human Rights Watch), and the United Nations, has raised the political cost of continued inaction on minority rights. The post-August 2024 reform momentum, however fragile and uncertain, has created at least the possibility of legislative action on minority rights issues. And the specific legal arguments for reform, grounded in the Constitution's equality provisions and in Bangladesh's international treaty obligations, provide a basis for judicial action that can advance the reform agenda even without legislative support.

9.2 The Role of Indian Engagement

The relationship between India and Bangladesh, and specifically India's engagement with the question of Hindu minority rights in Bangladesh, is a politically sensitive dimension of the reform debate that requires careful analysis. India has a legitimate interest in the welfare of the Hindu minority in Bangladesh: it is the world's largest Hindu-majority democracy, it shares a border with Bangladesh, it has received generations of Hindu refugees from what is now Bangladesh, and its government has spoken publicly and repeatedly about the need for Bangladesh to protect its Hindu citizens and their religious institutions. The Indian Ministry of External Affairs' statement that it is the responsibility of the interim government of Bangladesh to protect Hindus, their properties and their religious institutions, made in response to the Khilgaon temple demolition, is an expression of this interest in its most direct form.

But Indian engagement with the Hindu minority rights question in Bangladesh is a double-edged sword for the reform agenda. On one hand, Indian diplomatic pressure can raise the political cost for the Bangladesh government of ignoring the problem, and Indian media coverage of attacks on Bangladeshi Hindus can generate international attention that supports the advocacy of Bangladeshi civil society organizations. On the other hand, the framing of Hindu minority rights in Bangladesh as primarily a bilateral India-Bangladesh issue can be politically counterproductive: it allows the Bangladesh government to characterize advocacy for Hindu rights as Indian interference in Bangladesh's internal affairs, it invites the conflation of religious minority rights with geopolitical competition between India and Bangladesh, and it can actually make it harder for Bangladeshi advocates to advance their case within Bangladesh by associating them with foreign interests.

The most effective engagement for the reform agenda is therefore primarily domestic: reform advocates who are rooted in Bangladeshi civil society, who articulate their case in the language of Bangladesh's own constitution and international obligations, and who build alliances with non-Hindu Bangladeshis who share commitments to constitutionalism and minority rights, will have more success than those who rely primarily on Indian government support or on the amplification of international media.

CHAPTER TEN: COMPARATIVE PERSPECTIVES: THE SOUTH INDIAN TEMPLE ADMINISTRATION MODEL

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10.1 The Madras Hindu Religious and Charitable Endowments Act Model

The most developed statutory framework for the administration of Hindu religious institutions in South Asia is the one established by the Hindu Religious and Charitable Endowments Acts of the various states of South India, particularly Tamil Nadu. These Acts, developed over several decades beginning with the Madras Hindu Religious Endowments Act of 1927 and culminating in the more comprehensive Tamil Nadu Hindu Religious and Charitable Endowments Act of 1959, create an elaborate system of state supervision and support for Hindu temples and religious institutions that provides both a model and a cautionary tale for Bangladesh's reform project.

The Tamil Nadu HR and CE Act establishes a Department of Hindu Religious and Charitable Endowments with broad supervisory powers over Hindu temples, endowments, and maths in the state. The Department can take over the management of any temple whose management is found to be deficient, can appoint executive officers to manage individual temples, can audit the accounts of all registered institutions, and can use the powers of the courts to enforce compliance with the Act's requirements. The Act also establishes a Commissioner of Hindu Religious and Charitable Endowments with quasi-judicial powers to decide disputes about the management of religious institutions and the rights of Shebaits.

The Tamil Nadu model has been the subject of significant controversy within India. Critics, including the Free Temples movement and various Hindu nationalist organizations, argue that the state's control over Hindu temples amounts to an unjustified interference with religious freedom, that the Department has used its powers to divert temple revenues for non-religious purposes, and that the model represents a form of state expropriation of Hindu community assets that has no equivalent for the assets of other religious communities. Defenders of the model argue that the state's supervision has protected temple properties from mismanagement and alienation, has ensured the proper performance of religious functions, and has enabled the redistribution of resources from wealthy temples to poorer ones.

For Bangladesh, the Tamil Nadu model provides important lessons, both positive and negative. On the positive side, it demonstrates that comprehensive statutory regulation of Hindu religious institutions is legally feasible and can provide effective protection for endowment properties. The Madras High Court's January 2026 decision restoring 3.93 acres of temple land that had been illegally sold thirty years earlier demonstrates the effectiveness of judicial oversight in protecting temple properties over the long term. On the negative side, the controversy about state control of Hindu temples in Tamil Nadu is a reminder that the design of a regulatory framework must be careful to preserve the religious autonomy of Hindu institutions rather than making them effectively state enterprises. The Bangladesh framework should therefore be designed to give the regulatory body supervisory and protective functions without giving it the kind of executive management authority that has made the Tamil Nadu model controversial.

10.2 The West Bengal Perspective: Debottar Property in a Comparable Legal Context

The legal framework for Debottar properties in West Bengal, which shares the Dayabhaga tradition with Bangladesh and whose courts developed much of the foundational case law on

Hindu endowment law, provides the most directly relevant comparative framework for the reform of Bangladesh's law.

West Bengal has not enacted a comprehensive Hindu Religious Endowments Act equivalent to the Tamil Nadu model. Hindu religious institutions in West Bengal are governed by the general law of property and trusts, supplemented by the specific principles of the Anglo-Hindu case law on Debottar property and Shebaitship. But West Bengal has developed some specific administrative mechanisms, including the Government of West Bengal's 2021 memorandum on the alienation of private Debottar properties, which clarified that Shebaits do not need prior court permission for certain categories of alienation. The Calcutta High Court has also developed an active jurisprudence on the protection of Debottar properties from encroachment and misappropriation, exemplified by the observation that alienation of Debottar property in violation of the Hindu Religious and Charitable Endowments Act is null and void.

The Bangladesh courts, inheriting the same Calcutta High Court tradition, can draw on this West Bengal jurisprudence in developing their own approach to the protection of Debottar properties. But the comparative analysis also reveals that even in West Bengal, where the legal tradition is most directly applicable, the protection of Hindu religious institutions relies heavily on litigation rather than on a comprehensive administrative framework. The lesson for Bangladesh is that case-by-case litigation, while important, is insufficient as the primary mechanism for protecting Hindu religious institutions in an environment of systematic pressure on those institutions. Comprehensive legislation is required.

CONCLUSION TO PART SIX

The situation of Hindu religious institutions in Bangladesh in 2026 is one of the most pressing human rights and constitutional crises in the country's history. From August 2024 through 2025 and into 2026, more than fifty-nine attacks on places of Hindu worship were documented in the first half of 2025 alone, a total of two thousand two hundred and forty-four incidents of violence against minorities were recorded in the eleven months between August 2024 and June 2025, temples in Gaibandha, Kushtia, Netrokona, Tangail, Faridpur, and dozens of other districts were attacked, damaged, or destroyed, and the most prominent Hindu community advocate in Bangladesh, Chinmoy Krishna Das, remained in detention on charges that many observers consider politically motivated. The demolition of the Khilgaon temple mandap in June 2025 became an international incident, drawing condemnation from India and attention from the global human rights community.

This crisis has deep legal roots. The absence of a comprehensive legal framework for the registration, governance, and protection of Hindu religious institutions and their properties is not an accident; it is the product of a specific history of colonial incompleteness, post-independence political neglect, and systematic legal dispossession through instruments like the Enemy Property Act and the Vested Property Act. The reform of this legal landscape requires not merely legislative action but a fundamental reorientation of the relationship between the Bangladesh

state and its Hindu minority: a recognition that the constitutional guarantee of religious freedom is not merely a declaratory principle but an operative commitment that demands the active provision of legal tools through which Hindu communities can maintain their sacred institutions.

The proposed Hindu Religious Institutions and Endowments Act outlined in Chapter Seven of this Part represents the legislative core of the reform that is needed. But legislation alone will not solve the problem. The political dynamics that have blocked reform for fifty-three years remain powerful, and the communal environment that produces violence against Hindu temples is not amenable to legal cure. What the proposed legislation can do is change the legal terrain: give Hindu religious institutions the legal tools to defend their properties, give the courts the statutory authority to provide effective remedies, give the international community the evidence it needs to hold Bangladesh accountable for its treaty obligations, and give the Hindu community itself the institutional infrastructure it needs to maintain its sacred traditions in its homeland.

The Foreword to Part One of this treatise stated the central argument of the entire work: that thirteen million citizens of Bangladesh deserve a legal system that treats them as full human beings possessed of dignity, equality, and the capacity for self-determination. The sacred institutions through which those thirteen million people encounter the divine, maintain their cultural and spiritual heritage, and mark the rhythms of their lives from birth to death deserve the protection of that same legal system. The law should stand between those institutions and the forces that seek to destroy them. In Bangladesh today, it does not. It must.

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Part Seven of this treatise will examine the relationship between caste discrimination and Hindu personal law in Bangladesh: the origins and structure of the caste system in the Dharmasastra tradition; the specific ways in which caste hierarchies are embedded in the formal rules of Hindu personal law, including marriage, inheritance, adoption, and religious practice; the constitutional prohibition on discrimination on grounds of caste and its application to the intra-community practices of the Hindu caste system; the relationship between caste discrimination against Dalits within the Hindu community and the broader pattern of minority vulnerability in the majority-Muslim Bangladeshi society; the specific legal disabilities that Dalit Hindus face in the application of Hindu personal law; the comparable legal provisions in India relating to caste discrimination in Hindu communities, including the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act; and the reform proposals that would address both the formal caste discrimination embedded in Hindu personal law and the informal social discrimination that persists in Hindu community life in Bangladesh.

PART SEVEN

Caste, Discrimination, and the Architecture of Legal Exclusion: Dalit Communities, Caste Hierarchies in Hindu Personal Law, Constitutional Contradictions, and the Imperative of Reform in Bangladesh

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FOREWORD TO PART SEVEN

There is a particular cruelty that operates when a community suffers not one form of discrimination but several, layered upon each other in a structure so dense and so normalized by long historical practice that even those who inflict it often cannot see it clearly. The Dalit communities of Bangladesh inhabit precisely this kind of layered cruelty. They face discrimination as members of the Hindu religious minority in a Muslim-majority state that has, across its history, alternated between formal commitments to religious pluralism and episodes of communal violence that have driven millions of their community across the border into West Bengal. They face discrimination as members of the lowest rungs of the caste hierarchy that structures social life within the Hindu community itself, a hierarchy that assigns them to the most degrading occupations, excludes them from the spaces of worship and social intimacy that other

Hindus take for granted, and treats the very fact of their physical proximity as a form of pollution. And they face discrimination as a consequence of the specific rules of Hindu personal law that govern their most intimate affairs, rules that deny women among them inheritance rights, restrict marriage across caste lines, confine adoption within caste boundaries, and offer them no formal mechanism for escaping the marital arrangements into which they have been placed.

This triple marginalization, by religion, by caste within religion, and by the rules of personal law that govern religious community life, constitutes one of the most severe and most persistently ignored human rights crises in Bangladesh. It is ignored partly because the communities concerned are small and politically powerless, partly because the intersection of caste with minority religious status creates a complexity that neither the human rights community nor the state has shown great appetite for engaging with seriously, and partly because caste discrimination, unlike some other forms of human rights violation, is deeply embedded in cultural and religious frameworks that create barriers of sensitivity around its examination and critique.

This part of the treatise attempts to break through those barriers. It does so in the conviction that there is no form of human dignity that is less important because it is small in number or culturally familiar in form. The person who must empty a latrine by hand because the caste into which she was born assigns her to this work, who must drink from a separate water source because her touch is regarded as polluting, who cannot sit at the table of a neighbor of a different caste because her presence is considered contaminating, and who then discovers that the legal system governing her most intimate affairs treats her as a subordinate to the male members of her own household, this person is owed not merely sympathy but the full force of the legal system's commitment to equality, dignity, and the capacity for self-determination. That commitment, in Bangladesh today, remains unfulfilled.

The analysis in this part proceeds through nine chapters. The first examines the origins and structure of the caste system as articulated in the Dharmasastra tradition, attending carefully to the philosophical justifications offered for caste hierarchy and the critiques mounted against them from within the Hindu tradition itself. The second examines the specific ways in which caste hierarchies are embedded in the formal rules of Hindu personal law operative in Bangladesh, with detailed attention to marriage, inheritance, adoption, and religious practice. The third examines the constitutional provisions that prohibit caste discrimination and analyses the gap between constitutional promise and legal reality in the domain of Hindu personal law. The fourth examines the specific situation of Dalit Hindus in Bangladesh, their demographic profile, their occupational location, their relationship to both the Hindu community and the Muslim majority, and the specific pattern of legal disabilities they face. The fifth undertakes a comparative analysis of the legal frameworks developed in India to address caste discrimination within Hindu communities, focusing particularly on the Protection of Civil Rights Act of 1955, the Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act of 1989, and the judicial developments culminating in the Supreme Court of India's landmark decisions of 2024 and 2025 on caste discrimination. The sixth examines the international law framework and the growing body of international standards on caste-based discrimination, with particular reference to the

Committee on the Elimination of Racial Discrimination's General Recommendation on descent-based discrimination, the recommendations made at Bangladesh's Universal Periodic Review in March 2024, and the Amnesty International report of 2025 on Dalit sanitation workers in Bangladesh. The seventh provides a philosophical and jurisprudential analysis of the ethical foundations of the case for reform, engaging with theories of recognition, the jurisprudence of structural discrimination, and the developing concept of intersectional inequality in legal theory. The eighth considers the reform proposals that would address both the formal caste discrimination embedded in Hindu personal law and the informal social discrimination that persists in Hindu community life in Bangladesh. And the ninth considers the politics of reform and the strategic questions that reform advocates must navigate in the specific context of Bangladesh in 2025 and 2026.

CHAPTER ONE: THE ORIGINS AND STRUCTURE OF THE CASTE SYSTEM IN DHARMASASTRA

1.1 The Varna System and Its Cosmological Foundations

The caste system, in the sense that it is understood in the contemporary discourse of human rights and social justice, is a complex and historically layered phenomenon that cannot be adequately understood by reference to any single origin point or any single set of texts. But its formal articulation in the Hindu legal tradition begins with the concept of Varna, a Sanskrit term that means color or category, and refers to the four broad social categories into which classical Hindu jurisprudence divides human beings. The four Varnas are the Brahmin, the priestly and scholarly class; the Kshatriya, the warrior and ruling class; the Vaishya, the merchant and farming class; and the Shudra, the servile and laboring class. Beyond and below these four, and excluded from the Varna system altogether, are those who came to be known in later periods as the Panchamas, the fifth category, or what the colonial administration called the Depressed Classes and what contemporary discourse calls Dalits, from the Marathi word meaning broken or oppressed.

The cosmological justification for this fourfold division appears most famously in the Purusha Sukta hymn of the Rigveda, one of the oldest texts of the Hindu tradition, in which the four social classes are described as emerging from the sacrifice of the cosmic Purusha or primordial person. From the mouth of the Purusha came the Brahmin; from the arms, the Kshatriya; from the thighs, the Vaishya; and from the feet, the Shudra. This mythological narrative establishes the Varna hierarchy as a cosmic fact, an expression of the divine order rather than a human convention, and in doing so provides the ideological foundation for treating the social inequalities of the caste system as natural, necessary, and religiously sanctioned.

The jurisprudential implications of this cosmological foundation are profound and have been analyzed by legal historians working across the tradition from different perspectives. P.V. Kane, whose analysis of the Dharmasastra texts remains the most authoritative in the field, argued that the Varna system as described in the earliest texts was not understood as a system of rigid

hereditary exclusion but rather as a functional division of society based on qualities and aptitudes. The Bhagavad Gita, which is the most widely read philosophical text in the Hindu tradition, contains a famous verse in which Krishna tells Arjuna that the fourfold division of society was created by Krishna himself on the basis of the distribution of qualities and actions, not on the basis of birth. This interpretation, emphasized by the reformist tradition within Hinduism from the Bhakti movement of the medieval period through the modern reform movements of the nineteenth century, understands the Varna system as an ideal type of social organization based on merit rather than a hereditary system of birth-based exclusion.

But the historical reality, as documented across centuries of Dharmasastra literature and its social application, was far removed from this idealized interpretation. Whatever the philosophical foundations of the Varna concept, the practical operation of the caste system in Hindu society has been one of rigid hereditary transmission, with caste membership determined entirely by birth and governing virtually every dimension of social life. The Manusmriti, which remains the most systematically developed and the most influential of the Smriti texts for legal purposes, states with considerable directness the duties and restrictions associated with each Varna and makes clear that Varna membership is hereditary. The Manusmriti's provisions on the disabilities of the Shudra and on the complete exclusion of those below the Shudra from the social order created a legal framework that reinforced rather than mitigated the hierarchical and exclusionary character of the caste system in practice.

1.2 From Varna to Jati: The Proliferation of the Caste System

The Varna system, as described in the ancient texts, is a fourfold classification. But the actual social reality of caste in Hindu society has never been organized around these four broad categories alone. The operative unit of the caste system in daily social life is the Jati, a term that means birth-group and refers to the hundreds and indeed thousands of distinct hereditary groups that make up the actual fabric of caste organization in Hindu society. The relationship between Varna and Jati is complex and has been the subject of considerable scholarly debate. The standard account, which the Dharmasastra texts themselves provide, is that the proliferation of Jatis is the result of inter-Varna marriage and the birth of children from such mixed unions, a process of caste mixing called Varna Sankara in Sanskrit that the texts typically treat as a social disaster and a sign of moral degeneration.

The legal consequences of this Varna-Jati relationship are significant for our purposes. The formal legal rules of the Dharmasastra texts on marriage, inheritance, adoption, and religious practice are articulated primarily at the level of Varna. But their application in practice operates at the level of Jati. When the Dharmasastra texts prohibit marriage between persons of different Varnas, the practical prohibition operates as a prohibition on marriage between persons of different Jatis, since the Jati is the actual community unit within which marriage is arranged and to which the social and religious consequences of marriage attach. When Hindu personal law as applied in the colonial courts required that a valid Hindu adoption involve a child of the same caste as the adopting parent, the relevant unit was not Varna but Jati: the child must belong to the same Jati as the adopting father, not merely to the same broad Varna category.

This Jati-level operation of the caste system creates a legal complexity that has significantly complicated the application of Hindu personal law, particularly in the colonial and post-colonial periods. Courts applying Hindu law have had to grapple repeatedly with the question of how to identify and characterize caste for legal purposes, how to resolve disputes about the caste membership of particular individuals or families, and how to assess the legal effects of crossing Jati boundaries in marriage, adoption, or religious practice. The case law that has developed around these questions represents a fascinating and troubling record of the courts' attempts to manage a system of social organization that has proven resistant to legal rationalization.

1.3 The Position of Those Outside the Varna System

The most profound moral challenge posed by the classical Dharmasastra accounts of social organization is not the distinction between the four Varnas but the treatment of those who fall outside the Varna system altogether. The texts use various terms for these communities, including Chandala, Nishada, Pulkasa, and others, and describe their occupations in terms that reveal the logic of ritual pollution that underlies the entire structure. These communities are assigned the most degrading and polluting tasks, the handling of corpses, the tanning of hides, the removal of human waste, the slaughter of animals, and are treated as so polluting in their very persons that contact with them is considered to defile members of the higher Varnas.

The Manusmriti devotes considerable attention to the regulations governing these outside-Varna communities. Their dwellings must be outside the village. They must not use the same wells, cremation grounds, or temples as the Dvija or twice-born castes. They must identify themselves through distinctive dress or markers. They cannot walk on the same roads as higher-caste persons during certain times. And they are, in the fullest sense of the term, legal non-persons in the classical scheme: they have duties imposed on them by the social order but virtually no rights recognized by it.

The philosophical traditions that have arisen within Hinduism to challenge this framework are numerous and important. The Bhakti tradition, which produced saints like Kabir, Tukaram, and Ravidas, rejected the authority of the Brahminic hierarchy and affirmed the spiritual equality of all persons regardless of caste birth. The reformist movements of the nineteenth and twentieth centuries, including the Brahmo Samaj founded by Ram Mohan Roy, the Arya Samaj founded by Dayananda Saraswati, and the work of B.R. Ambedkar, who himself was born a Dalit and became independent India's first Law Minister and the principal drafter of its constitution, all challenged the legitimacy of the caste system from different philosophical starting points. Ambedkar's engagement with the Hindu tradition is particularly significant for our purposes. Unlike the reformist tradition that sought to rehabilitate Hinduism by distinguishing its true essence from caste corruption, Ambedkar concluded after decades of reflection that the caste system was not an accidental corruption of an essentially egalitarian Hindu tradition but was deeply embedded in the foundational texts and practices of that tradition. His famous work Annihilation of Caste, written in 1936, remains one of the most searching and philosophically serious critiques of the Hindu caste system and its textual foundations ever written.

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1.4 Caste in Bengal: The Dayabhaga Context

The specific form that caste organization takes in Bengal, the tradition from which Hindu law in Bangladesh descends, has both similarities to and differences from the all-India pattern described in the preceding sections. The Dayabhaga school of Hindu law, which governs Hindu Bengalis, was developed primarily in relation to the social conditions and Jati structures of Bengal, and the commentary literature of the Dayabhaga tradition reflects the specific caste hierarchies and practices of Bengali Hindu society.

Bengali Hindu society has historically been organized around a set of Jati hierarchies that follow the general Varna logic but take specific forms shaped by the history of Bengal. At the apex of the Bengali caste hierarchy are the Brahmin communities, subdivided into two major groups, the Rarhi Brahmins and the Vaidika Brahmins, with further internal hierarchies between them. Below the Brahmins, the Kayastha community has historically played the role of the scribal and administrative class in Bengal, and the Vaidyas, traditionally practitioners of Ayurvedic medicine, have been another high-status non-Brahmin community. These three groups, the Brahmin, the Kayastha, and the Vaidya, are collectively referred to in Bengali social discourse as the Bhadralok, the respectable people, and have historically dominated the social, cultural, and political life of Bengal.

Below the Bhadralok are the middle-ranking Jatis, including various agricultural, artisan, and trading communities, and at the base of the Bengali Hindu caste hierarchy are the communities that correspond to the outside-Varna groups of the classical texts. In Bengali social discourse, these communities are referred to by a range of terms, some derogatory and now rejected by the communities themselves, and include groups like the Namasudra, the Dom, the Rajbanshi, the Hori or Harijan, and others. It is these communities that constitute what is meant by Dalit in the Bangladeshi context.

The Dayabhaga texts themselves engage with caste primarily in the context of the rules governing marriage, adoption, and ritual performance, the domains where caste membership has the most direct legal consequences. Jimuta Vahana's Dayabhaga, the foundational text of the school, requires that the parties to a valid adoption be of the same Gotra, the patrilineal clan group, and restricts the range of valid marriages to unions within the broad Varna category and specifically within appropriate Jati boundaries. The commentary literature that developed around the Dayabhaga elaborated these provisions in ways that embedded the Jati-level caste hierarchy more deeply into the formal rules of personal law.

1.5 The Colonial Transformation of Caste in Law

The encounter between the British colonial legal system and the Hindu caste system transformed both. The colonial courts, attempting to apply what they understood as Hindu law, took the Varna and Jati categories they found in the texts and converted them into rigid legal classifications that became determinative for a range of legal questions. The process of converting what was in practice a fluid, locally variable, and contested system of social hierarchy

into a fixed grid of legal categories had profound and largely negative consequences for the communities at the bottom of the hierarchy.

On the one hand, the colonial system did produce some specifically anti-caste legislation. The Caste Disabilities Removal Act of 1850, enacted during the period of British rule in India, provided that no person should forfeit rights or property merely by reason of renouncing his religion or being excommunicated from his caste or community. This act was significant because it broke the connection between caste membership and civil legal status in one specific domain: a person who converted from Hinduism or was excommunicated from his Jati could no longer be deprived of his property rights on that ground alone. The Caste Disabilities Removal Act technically remains on the statute books of Bangladesh as a pre-independence law that was not formally repealed, though its practical application and scope have been subjects of considerable legal uncertainty.

On the other hand, the colonial legal system's overall effect on caste was deeply ambiguous. By systematizing and rigidifying the caste categories found in the texts, by treating caste membership as a fixed legal fact rather than a contested social relation, and by applying caste-based rules in contexts where the texts themselves were ambiguous or contradictory, the colonial courts often reinforced the legal dimensions of caste hierarchy rather than challenging them. The famous debate between those who see the colonial encounter as having reinforced caste discrimination and those who see it as having introduced the legal tools that would eventually be used to challenge caste discrimination runs through the entire historiography of Hindu law reform, and it is not possible to resolve that debate here. What can be said is that the Bengali Hindu communities at the bottom of the caste hierarchy were among the least served and most harmed by the colonial system's application of Hindu personal law.

CHAPTER TWO: CASTE EMBEDDED IN THE FORMAL RULES OF HINDU PERSONAL LAW IN BANGLADESH

2.1 Marriage Law and the Caste Prohibition

The most immediately visible embedding of caste hierarchy in the formal rules of Hindu personal law in Bangladesh is the prohibition on inter-caste marriage. Under the rules of Hindu personal law as operative in Bangladesh, a valid Hindu marriage requires, among other conditions, that the parties be of the same caste. The Dayabhaga school's provisions on valid and invalid marriages draw directly on the classical Dharmasastra accounts of the eight forms of marriage and the conditions of validity, and caste compatibility is one of those conditions. A marriage between a Brahmin man and a woman of a lower caste, or between members of two different Jatis that are considered incompatible in the social hierarchy of Bengali Hinduism, may be challenged on grounds of invalidity, with potentially serious consequences for the legal status of the marriage and the parties to it.

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The practical consequences of this caste requirement in marriage are significant and deeply unjust. First, it means that individuals who fall in love across caste lines and wish to solemnize their relationship in a form recognized by Hindu law face a legal obstacle that has no parallel in the law governing Muslims in Bangladesh, who may marry across racial, ethnic, and national lines without any such legal restriction under Muslim personal law. Second, it means that communities at the bottom of the caste hierarchy are effectively confined in their marriage choices to partners within their own caste group, a confinement that reinforces economic deprivation by preventing the formation of cross-caste economic alliances through marriage. Third, it means that children born of inter-caste unions may face questions about their legal status, their right to inherit from their parents, and their caste identity that the law provides no clear mechanism for resolving.

The only statutory relief from the inter-caste marriage prohibition in Bangladeshi law is provided by the Special Marriage Act of 1872, a colonial-era statute that allows persons of different castes or religions to marry under its provisions without regard to caste or religious restrictions. However, the Special Marriage Act imposes its own substantial costs. Under section 23 of that Act, a person professing the Hindu religion who marries under the Act has the same rights as a person to whom the Caste Disabilities Removal Act applies, and under section 24, succession to the property of such a person is regulated by the Succession Act of 1925, which applies the rules of intestate succession that would apply to a person who has lost caste. And under section 25, a person who marries under the Special Marriage Act loses the right of adoption under Hindu law. The cumulative effect of these provisions is that a Bangladeshi Hindu who wishes to marry across caste lines, or indeed across religious lines, faces not merely social stigma but a specific legal penalty: the loss of inheritance rights under Hindu personal law and the loss of the right to adopt a child according to Hindu customs. This is a remarkable and deeply unjust provision that effectively uses the personal law system as an instrument for penalizing those who deviate from caste norms in their marriage choices.

The contrast with India is instructive and, for Bangladeshi Hindus, deeply frustrating. The Hindu Marriage Act of 1955, enacted in India in the reformist wave that followed independence, abolished the caste restriction on marriage entirely. Section 5 of the Hindu Marriage Act specifies the conditions for a valid Hindu marriage and does not include caste compatibility among them. The result is that inter-caste marriage has been legally valid and legally protected in India for over sixty years. India has gone further: the Special Marriage Act of India, as amended in 1954, provides an alternative framework for civil marriage without regard to caste or religion, and the government of India has created financial incentives through the Dr. Ambedkar Scheme for Social Integration to encourage inter-caste marriages involving Dalit partners. Bangladesh has done none of this. Its law remains where India's law was in the 1940s, and the Dalit communities at the bottom of the caste hierarchy continue to pay the price.

2.2 Caste and the Rules of Inheritance

The rules of inheritance in the Dayabhaga school, as analyzed in detail in Part Three of this treatise, do not on their face discriminate between persons of different caste groups within the Hindu community. The rules of inheritance apply to all Hindus governed by the Dayabhaga

school, and the caste of the parties is not formally determinative of their share in the estate of a deceased person. However, the interaction of inheritance rules with the caste system produces discriminatory effects through two different mechanisms.

The first mechanism is the operation of the rules of inheritance in the context of mixed-caste or inter-caste families, where the parents have married under the Special Marriage Act or through custom rather than through a formal Hindu marriage ceremony. As noted in the preceding section, a person who marries under the Special Marriage Act is subject to the Succession Act of 1925 rather than the rules of Hindu inheritance. This means that the children of such a marriage are also subject to the Succession Act rather than to Dayabhaga inheritance rules. The practical effect of this provision depends on the specific circumstances of each case, but in general terms, it means that the consequences of crossing caste lines in marriage ripple forward into the inheritance rights of the next generation, creating a web of legal penalties that systematically disadvantages those who challenge caste boundaries.

The second mechanism is more subtle but equally significant. The property rights of Hindu women under Dayabhaga law, as analyzed in detail in Part Three, are severely limited compared to those of male heirs. A Hindu widow has, under the classical Dayabhaga rules, only a limited life interest in her deceased husband's property: she can enjoy the income from it during her lifetime but cannot alienate it, and on her death it passes to the husband's heirs rather than to her own. A daughter has, under the classical rules, a limited right to inherit from her father's estate, but this right is contingent on the absence of male heirs and comes with similar restrictions on alienation. These limitations on female inheritance rights apply to all Hindu women regardless of caste. But their practical impact falls disproportionately on Dalit women, for several reasons.

Dalit women are more likely to be in economically precarious situations where the denial of property rights is a matter not merely of principle but of survival. They are less likely to have access to legal advice and representation that could help them navigate the complex provisions governing female inheritance. They are more likely to be in communities where the informal enforcement of caste norms, through social pressure, ostracism, and sometimes physical violence, reinforces the formal legal rules that disadvantage women. And they are less likely to have male relatives who will support their claims to property, given the higher rates of family dissolution and male out-migration in the communities at the bottom of the caste hierarchy.

The 2023 decision of the Appellate Division of the Supreme Court of Bangladesh in the case of Chitta Ranjan Mondol and Others, discussed in the foreword to this part and in detail in Part Three, represents an important judicial development in the direction of gender equality within the Dayabhaga framework. The court held that daughters and sons inherit their mother's Stridhan equally and absolutely, rejecting the Privy Council precedent that had excluded daughters' daughters from inheriting Stridhan property. But the significance of this decision for Dalit women is limited by the same factors that limit the impact of any judicial development in this area: the persistence of informal enforcement of discriminatory norms, the barriers to legal access that prevent most Dalit women from bringing their claims to court, and the absence of a systematic legislative framework that would make the principle of gender equality in inheritance operative across the entire community without requiring individual litigation.

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2.3 Caste and the Rules of Adoption

The rules governing adoption under Hindu personal law in Bangladesh contain some of the most explicit and most legally consequential caste-based restrictions in the entire system. Under the Dayabhaga school's rules of adoption, a valid adoption requires, among other conditions, that the child to be adopted must belong to the same caste as the adopting father. The rule is stated clearly in the Dayabhaga text itself and has been consistently applied by the courts. Adoption across caste lines is therefore not merely socially stigmatized under Hindu personal law in Bangladesh; it is legally invalid.

The consequences of this rule are significant at multiple levels. At the most immediate level, it means that a couple who belong to a particular Jati and who are unable to have children of their own cannot adopt a child from a different Jati, even if that child is in desperate need of care and the couple are in a position to provide it. The rule therefore restricts the freedom of both the adopting parents and the child, and does so in the service of the preservation of Jati purity rather than in the service of the welfare of any of the parties concerned. At a deeper level, the adoption rule reflects the understanding of adoption in Hindu law as primarily a religious and ritual act rather than a welfare measure. The adopted child is required, in the classical understanding, to perform the funeral rites of the adopting father, and this ritual function requires that the child share the Gotra and caste of the adopting father. But this ritual understanding of adoption conflicts fundamentally with the modern constitutional and statutory understanding of adoption as a child welfare measure, in which the best interests of the child are the paramount consideration.

The contrast with both the Indian statutory position and the constitutional principles applicable in Bangladesh is again stark. The Hindu Adoptions and Maintenance Act of 1956 in India removed the caste restriction from adoption, providing that any Hindu male or female could adopt a child without regard to the caste of the child. The Juvenile Justice Act of 2015 in India goes further, providing a secular framework for adoption that applies to children of all religions and from all social backgrounds. In Bangladesh, by contrast, the caste restriction on adoption under Hindu personal law has never been removed by legislation, and the courts have consistently applied it. The practical consequence is that Dalit children who are in need of adoption face a further barrier that non-Dalit Hindu children do not: they can only be adopted by parents of their own caste, which, given the economic deprivation of most Dalit communities, significantly reduces the pool of potential adopting parents.

2.4 Caste and Access to Religious Practice

Beyond the formal rules of marriage, inheritance, and adoption, the caste system as it operates in the context of Hindu personal law in Bangladesh produces discriminatory effects in the domain of religious practice that have legal dimensions of their own. The question of access to temples, to the services of Brahmin priests, and to the full range of Hindu religious rituals is governed not by statute but by the practices of individual temple communities and Jati groups. But these practices have legal significance because they bear on the legal questions that arise in the context

of Hindu religious endowments, Debottar properties, and the governance of Hindu religious institutions, as analyzed in detail in Part Six of this treatise.

The specific legal dimensions of caste-based exclusion from religious practice include the following. First, Dalit Hindus in Bangladesh have historically been excluded from access to many temples and from the performance of certain religious rituals by the upper-caste communities that control those temples and rituals. This exclusion is not a formal legal rule; no statute in Bangladesh declares that Dalits may not enter temples or that they are not entitled to the services of Brahmin priests. But the practical reality is that the governance structures of many Hindu temples and religious institutions in Bangladesh are controlled by upper-caste communities whose internal norms and practices perpetuate caste-based exclusion from worship spaces. This exclusion is constitutionally problematic under Article 28 of the Bangladesh Constitution, which prohibits discrimination on grounds of caste, but the constitutional prohibition applies only to state action, not to the private practices of non-state actors like temple management committees.

Second, the rules governing the appointment of Shebaits, the hereditary trustees who manage Hindu religious endowments, have historically operated in ways that perpetuate upper-caste dominance over religious institutions. As analyzed in Part Six, the Shebaitship over a Debottar property is typically transmitted through the family that originally made the dedication, and those families are typically upper-caste. The system of hereditary Shebaitship therefore tends to reproduce the caste hierarchy of the founding generation across successive generations, excluding Dalit Hindus from positions of authority and trust in the management of Hindu religious life.

Third, the concept of Sapinda relationship, which determines who is eligible to inherit from a deceased person, perform funeral rites, or participate in the religious ceremonies that Hindu personal law regards as legally significant, is defined in ways that track the Jati hierarchy. Persons who are not related through recognized Sapinda connections, and Dalits who have been excluded from the ritual community of upper-caste Hindus, may find that their claims to perform funeral rites or to inherit property on the basis of close biological relationship are contested on the ground that they fall outside the legally recognized Sapinda circle.

CHAPTER THREE: CONSTITUTIONAL PROVISIONS AND THE GAP BETWEEN PROMISE AND REALITY

3.1 The Constitutional Framework Against Discrimination

The Constitution of the People's Republic of Bangladesh, adopted in 1972, contains provisions that are, on their face, among the most comprehensive anti-discrimination guarantees in the constitutional orders of South Asia. Article 27 declares that all citizens are equal before the law and are entitled to equal protection of the law. Article 28 provides, in subsection (1), that the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex or

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place of birth. Article 28, subsection (2), provides that women shall have equal rights with men in all spheres of the state and of public life. Article 28, subsection (4), provides that nothing in Article 28 shall prevent the state from making special provision in favor of women, children, or backward sections of citizens.

The constitutional prohibition on caste discrimination in Article 28(1) is, therefore, explicit and unambiguous. The state of Bangladesh is constitutionally prohibited from discriminating against citizens on the grounds of caste. This prohibition applies to all state action, including the application and enforcement of the rules of Hindu personal law, which is administered by the state court system and enforced through state mechanisms. If the rules of Hindu personal law themselves discriminate on the grounds of caste, for example by requiring caste compatibility as a condition of valid marriage or adoption, those rules are constitutionally suspect under Article 28(1).

The argument for treating the caste-discriminatory rules of Hindu personal law as unconstitutional under Article 28(1) has been made by a number of Bangladeshi constitutional lawyers and human rights advocates, and it has been the subject of several High Court proceedings in which the courts have been asked to strike down discriminatory provisions of Hindu personal law. The writ petition that led to the High Court's rule in the Hindu inheritance case, discussed in Part Three and referenced in the earlier documents collected for this treatise, relied explicitly on Article 27, Article 28(1), and Article 28(2) in arguing that the denial of inheritance rights to Hindu women violated the constitutional guarantee of non-discrimination. The court's response to this argument, as discussed in Part Three, was significant and encouraging, but the broader question of whether the caste-discriminatory rules of Hindu personal law are themselves unconstitutional has not been systematically addressed by the Bangladeshi courts.

3.2 The Limitations of the Constitutional Prohibition

The constitutional prohibition on caste discrimination in Article 28(1) is, however, subject to important limitations that significantly reduce its practical effectiveness as a tool for challenging the caste-discriminatory rules of Hindu personal law.

The first and most fundamental limitation is the state action requirement. The constitutional prohibition in Article 28(1) applies to discrimination by the state; it does not apply to discrimination by private actors. The discrimination that Dalit Hindus experience in their daily social lives, exclusion from temples, denial of service at restaurants, refusal of access to water sources, prohibition on sitting at the tables of upper-caste neighbors, and all the other practices of untouchability that the Dharmasastra tradition legitimized, is perpetrated not by the state but by private individuals and communities. The constitution provides no direct legal remedy for this privately perpetrated discrimination. A specific anti-discrimination statute, applicable to private actors as well as the state, would be required to address this dimension of caste-based discrimination, and Bangladesh does not have such a statute.

The anti-discrimination bill that has been under consideration in Bangladesh since approximately 2022, which was recommended for rapid implementation by multiple countries during Bangladesh's Universal Periodic Review at the 55th session of the Human Rights Council in March 2024, would partially address this gap. The bill, if enacted, would extend the prohibition on discrimination to private actors in specified domains, including employment, education, and the provision of services. But as of the time of writing in early 2026, the bill has not been enacted, and the gap between constitutional promise and legal reality remains wide.

The second limitation of the constitutional prohibition is the absence of enforcement mechanisms. Even where state action is concerned, the constitutional prohibition on caste discrimination is of limited practical effect in the absence of specific statutory provisions and administrative mechanisms to enforce it. The right to challenge discriminatory state action through Article 102 proceedings before the High Court, which allows the court to issue directions and orders for the enforcement of fundamental rights, is theoretically available but practically inaccessible for most Dalit Hindus. The High Court is located in Dhaka, proceedings before it are expensive and time-consuming, and the legal and financial resources required to bring and sustain a constitutional challenge are beyond the reach of the vast majority of Dalit Bangladeshis.

The third limitation of the constitutional prohibition is the specifically personal law context. The rules of Hindu personal law are applied by courts as expressions of the religious customs and traditions of the Hindu community. The state's formal role is to enforce these customs as recognized legal rules, not to impose its own rules on the community. This understanding of the state's role in relation to religious personal law creates a particular barrier to using the constitution to challenge caste-discriminatory rules within Hindu personal law, because any such challenge can be met with the argument that the state is interfering with the religious freedom of the Hindu community and with the community's right to govern its own affairs according to its own religious laws. This argument has been made against reform proposals in both Bangladesh and India, and it reflects a real tension between the constitutional principles of religious freedom and equality that cannot be resolved simply by asserting the priority of one over the other.

3.3 The Jurisprudence of Constitutional Equality and Caste

The question of how to understand the relationship between the constitutional guarantee of equality and the caste-discriminatory rules of religious personal law is one of the most contested questions in the constitutional jurisprudence of South Asian countries. The way that the Bangladesh courts resolve this question will have significant implications not only for the specific rules discussed in this part but for the broader framework of Hindu law reform analyzed throughout this treatise.

The dominant approach in the Indian courts, which are the most relevant comparative source for Bangladesh given the shared Dayabhaga tradition and the shared British constitutional heritage, has been to treat the constitutional guarantee of equality as capable of being used to challenge discriminatory personal law rules, but to do so with considerable caution and only when the discrimination is clear and severe. The Indian Supreme Court's decision in the state of Bombay

versus Narasu Appa Mali of 1952 held that personal laws are not laws within the meaning of the constitutional prohibition on discrimination, a holding that has been controversial and criticized but has never been definitively overruled by the Supreme Court of India. More recent decisions, particularly the Kerala High Court's decisions in cases involving discriminatory practices within Hindu temples, have taken a more expansive view of the constitutional reach of the equality guarantee.

The Bangladesh Appellate Division's decision in the Chitta Ranjan Mondol case of 2023, which used the constitutional equality provisions to interpret the Dayabhaga rules on Stridhan inheritance in a way that expanded the inheritance rights of daughters' daughters, represents a significant step toward a more expansive reading of the constitutional equality guarantee in the personal law context. But the decision stopped short of directly striking down any provision of Hindu personal law as unconstitutional. It achieved its result through reinterpretation rather than invalidation, finding that the correct reading of the Dayabhaga texts themselves supported equal inheritance for daughters' daughters and that the Privy Council precedent to the contrary was per incuriam. This approach, which achieves reform through reinterpretation rather than confrontation, has both advantages and limitations. Its advantage is that it avoids the direct conflict with religious community authority that a ruling of unconstitutionality would entail. Its limitation is that it can only achieve results that can be plausibly derived from the texts themselves, and the caste-discriminatory rules of Hindu personal law, particularly the marriage and adoption rules, are too clearly stated in the texts to be reformed through reinterpretation alone.

3.4 The Failure to Legislate: A Constitutional Dereliction

There is a dimension of the constitutional analysis that deserves separate and extended attention, because it points to a form of constitutional failure that is different from the active imposition of discrimination and in some ways more difficult to challenge legally, but not less serious morally. The Constitution of Bangladesh, in Article 19(2), provides that the state shall adopt effective measures to remove social and economic inequality between man and man and to ensure the equitable distribution of wealth among citizens, and to ensure equality of opportunity and status for all citizens. This provision, read alongside the specific prohibition on caste discrimination in Article 28(1), can be understood as imposing on the state an affirmative obligation to take measures to eliminate the systematic inequality that the caste system has created.

The state of Bangladesh has manifestly failed to discharge this affirmative obligation in relation to caste-based discrimination. It has not enacted the anti-discrimination bill that its own government has been drafting since 2022 and that the international community has repeatedly urged it to enact. It has not amended the Hindu personal law to remove the caste restrictions on marriage and adoption. It has not created any administrative mechanism or body with specific responsibility for monitoring and addressing caste-based discrimination. It has not disaggregated its census and administrative data by caste, which means that the basic statistical information needed to assess the extent and impact of caste-based discrimination is not systematically available. And it has not provided targeted support, through educational access, employment

reservation, or other affirmative measures, to the Dalit communities who face the most severe consequences of caste-based discrimination.

This comprehensive failure to act is not constitutionally neutral. Scholars working in the tradition of transformative constitutionalism, including the South African constitutional theorist Karl Klare and the Indian constitutional scholar Upendra Baxi, have argued persuasively that a constitutional order committed to equality and dignity imposes not merely negative duties, the duty not to discriminate, but also positive duties, the duty to take affirmative measures to dismantle structures of systematic inequality. Applied to the situation of Dalit Bangladeshis, this argument would hold that the state's failure to legislate against caste-based discrimination is itself a violation of the constitutional commitment to equality, not merely a policy failure.

This argument has not yet been tested in the Bangladesh courts in the specific context of Dalit rights, but its theoretical foundations are sound and its practical implications for the reform agenda are important. It suggests that reform advocates should frame their case not merely as a request for legislative action but as a demand for the fulfillment of existing constitutional obligations, obligations that the state has long been in breach of. This framing shifts the political terrain significantly: it transforms the reform debate from a discussion of whether reform is desirable to a discussion of how to fulfill constitutional duties that are already legally binding.

CHAPTER FOUR: DALIT HINDUS IN BANGLADESH: DEMOGRAPHIC PROFILE, OCCUPATIONAL LOCATION, AND SPECIFIC LEGAL DISABILITIES

4.1 Who Are the Dalits of Bangladesh?

The term Dalit in the Bangladeshi context refers to a diverse set of communities that share the common characteristic of belonging to the outside-Varna or below-Varna categories of the caste hierarchy that has historically structured Hindu social life in Bengal. Estimates of the total size of the Dalit population in Bangladesh vary, partly because the government does not collect disaggregated data by caste and partly because the communities in question do not have a single unified organizational identity. Civil society organizations working with Dalit communities in Bangladesh have estimated the Dalit population at approximately five to six million persons, with some estimates suggesting a figure as high as six and a half million. These estimates suggest that Dalits constitute somewhere between three and four percent of the total population of Bangladesh.

The specific communities that make up this Dalit population are diverse. The Namasudra community, historically associated with agricultural labor and fishing in the deltaic regions of Bengal, is one of the largest Dalit communities in Bangladesh. The Dom community, historically associated with cremation work and the handling of the dead, is another. The Hori or Harijan community, historically associated with sweeping and sanitation work, is a third major group. The Rishi community, associated with cobbling and leather work, is a fourth. These communities, despite their diversity in terms of geographic origin, occupational history, and

specific social practices, share the common experience of being treated as untouchable by the upper castes of the Hindu community, of being confined to the most degrading occupations by the combined force of custom, economic constraint, and social violence, and of having their rights within the Hindu personal law framework systematically circumscribed by the caste rules analyzed in the preceding chapter.

The overwhelming majority of Dalit Bangladeshis are poor. The International Dalit Solidarity Network's documentation of the situation of Dalits in Bangladesh describes a pattern of multiple deprivation that is extreme even by the standards of a country where significant portions of the total population remain in poverty. Most Dalits live far below the poverty line. They have extremely limited access to health services, quality education, and adequate housing. Their employment options are severely restricted by caste-based discrimination that excludes them from all but the lowest-status occupations, reinforcing the connection between caste identity and economic deprivation across generations. The 2025 Amnesty International report on Dalit women sanitation workers in Bangladesh, referenced in the International Dalit Solidarity Network's documentation, reveals that Dalit sanitation workers in coastal districts like Khulna and Satkhira endure what the report describes as extreme exclusion, lacking basic water connections, working in informal sanitation roles without legal recognition or protection, and being excluded from decision-making processes about the infrastructure and conditions of their work.

4.2 The Double Marginalization of Dalit Hindus

The specific situation of Dalit Hindus in Bangladesh, as distinct from Muslim Dalits or from Dalit communities in other South Asian countries, is shaped by the intersection of caste-based discrimination with minority religious status in ways that produce a distinctive pattern of double marginalization.

As members of the Hindu religious minority in Bangladesh, Dalit Hindus share the vulnerabilities of the broader Hindu community: vulnerability to communal violence, insecurity of property rights exacerbated by the history of the Enemy Property Act and the Vested Property Act, underrepresentation in public employment and political institutions, and the general atmosphere of intimidation and uncertainty that characterizes life as a religious minority in a country where minority status has historically been associated with physical danger. The surge of violence against the Hindu minority following the political transition of August 2024, documented in detail in Part Six of this treatise, fell indiscriminately on Hindus of all castes, and Dalit Hindu communities in rural areas suffered alongside upper-caste Hindus.

But Dalit Hindus also face discrimination within the Hindu community itself, discrimination that upper-caste Hindus do not face and that compounds the vulnerability created by minority religious status. When a Dalit Hindu family is displaced by communal violence and seeks refuge in a Hindu neighborhood or community space, they may find that the caste hierarchy of the Hindu community reproduces itself even in conditions of shared vulnerability, with Dalit families finding themselves excluded from the better-placed locations or better-resourced temporary shelter arrangements that upper-caste Hindus are able to access. When a Dalit Hindu

widow is denied inheritance rights under the rules of Hindu personal law and turns to the community for support, she may find that the upper-caste Hindus who control the religious and social institutions of the community are unwilling to advocate for a woman of lower caste. And when Dalit Hindu communities seek to establish or maintain their own temples and religious institutions, they may find that the upper-caste dominated governance structures of the broader Hindu community provide no support or recognition for these distinctively Dalit religious spaces.

The double marginalization of Dalit Hindus is further complicated by the position of Muslim Dalits in Bangladesh, a community that has received somewhat more attention in recent years precisely because its existence challenges the assumption that caste discrimination is an exclusively Hindu phenomenon. As several analysts of Bangladeshi social structure have noted, caste-based hierarchies and practices of discrimination have spread from the Hindu community into the Muslim community of Bangladesh, partly through processes of social diffusion and partly because many Muslim Bangladeshis converted from Hinduism centuries ago and retained aspects of the caste structure in their social organization even after conversion. Muslim Dalits in Bangladesh are associated with the same low-status occupations as Hindu Dalits, including sweeping, leather-working, and sanitation, and face similar practices of social exclusion in their daily lives. But Muslim Dalits do not face the specific legal disabilities created by the caste rules of Hindu personal law, since they are governed by Muslim personal law which does not contain caste-specific provisions of the kind analyzed in this part. The situation of Muslim Dalits is therefore one of social and economic discrimination without the additional layer of personal law discrimination that compounds the disadvantage of Hindu Dalits.

4.3 Occupation-Based Discrimination and Its Legal Dimensions

The most persistent and the most practically significant form of caste-based discrimination facing Dalit Hindus in Bangladesh is occupation-based discrimination: the systematic confinement of Dalit communities to the lowest-status, lowest-paid, and most physically degrading occupations. This occupational confinement is maintained by a combination of formal and informal mechanisms that interact in complex ways.

The informal mechanisms are the most powerful in daily life. Social norms that associate Dalit communities with specific polluting occupations, the refusal of upper-caste employers to hire Dalit workers for non-traditional occupations, the social and economic networks that channel available opportunities within caste lines, and the threat of social violence against Dalits who attempt to cross the occupational boundaries assigned to them by the caste hierarchy, all operate to reproduce the occupational structure of the caste system across generations without requiring any formal legal prohibition.

But there are also formal and semi-formal mechanisms that reinforce occupational confinement. In the municipal sanitation sector, which employs large numbers of Dalit Hindus as sweepers and cleaners, the municipal authorities of major Bangladeshi cities including Dhaka have historically filled these positions almost exclusively with Dalit workers, creating an informal reservation system that works in reverse of the positive discrimination systems of India: rather

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than reserving high-status positions for historically disadvantaged groups, the Bangladeshi practice has been to reserve the lowest-status positions for those same groups. The Amnesty International report of 2025 on Dalit sanitation workers documents this pattern in detail and notes that in the coastal districts of Khulna and Satkhira, Dalit women who work as sanitation employees are denied basic labor protections, have no formal employment contracts, receive wages below the statutory minimum, and are excluded from the social protection schemes that are available to other workers.

The legal dimensions of occupational confinement are multiple. First, the denial of equal employment opportunities to Dalit workers, including Dalit Hindus, is a violation of Article 29 of the Bangladesh Constitution, which provides that there shall be equality of opportunity for all citizens in respect of employment or office in the service of the Republic, and adds in subsection (2) that no citizen shall on grounds only of religion, race, caste, sex or place of birth be ineligible for or discriminated against in respect of any employment or office in the service of the Republic. This provision applies to state employment, and the municipal sanitation sector, as a branch of local government, is within its scope. The systematic exclusion of Dalit workers from municipal employment other than the lowest-status sanitation positions is therefore not merely a social injustice but a constitutional violation, one that could in principle be challenged through Article 102 writ proceedings.

Second, the absence of formal employment contracts and the payment of below-minimum wages to Dalit sanitation workers, documented in the 2025 Amnesty International report, are violations of the Bangladesh Labour Act of 2006 and its subsequent amendments. The Bangladesh Labour Act provides, among other things, for minimum wages, for written employment contracts, and for basic protections against unfair termination. The failure of municipal authorities to provide these protections to Dalit sanitation workers is a violation of the Act that could be addressed through the labor dispute resolution mechanisms created by the Act, though the practical barriers to using those mechanisms, including the inability to take time off work to attend legal proceedings and the fear of retaliation by employers, make individual litigation an inadequate remedy.

Third, the connection between occupational confinement and the rules of Hindu personal law operates through the inheritance system. When a Dalit Hindu man dies, the formal rules of Hindu personal law determine what his widow and children will inherit. If the estate consists primarily of the tools of a sweeper's trade and the informal right to a particular sweeping route or sector, the inheritance of that estate perpetuates the occupational identity of the community: the next generation inherits the sweeper's route along with the sweeper's social status. This is not a mechanism of formal legal discrimination, but it illustrates how the operation of the inheritance rules reinforces occupational confinement in practice.

4.4 The Specific Legal Disabilities of Dalit Women

Within the Dalit Hindu community, women face a further layer of disadvantage created by the intersection of caste-based discrimination with gender-based discrimination. Dalit Hindu women are, in the terminology that has emerged from the academic literature on intersectionality, at the

intersection of multiple axes of disadvantage: they are disadvantaged as Dalits, as Hindus in a Muslim-majority country, and as women in a patriarchal social order. Each of these axes of disadvantage compounds the others, and the resulting combination produces a pattern of vulnerability that is more severe than the sum of its parts.

The specific legal disabilities that Dalit Hindu women face in the domain of Hindu personal law arise from both the caste-specific rules analyzed in Chapter Two of this part and the general gender-discriminatory rules of Hindu personal law analyzed in Parts Two and Three of this treatise. The caste-specific rules limit their marriage choices, exclude them from the pool of potential adopting parents for children of other castes, and restrict their participation in certain religious rituals. The general gender-discriminatory rules limit their inheritance rights, deny them the right to seek divorce, leave them without legal protection against polygamy, and provide them with inadequate maintenance remedies.

The combination of these two sets of disadvantages creates specific patterns of vulnerability. A Dalit Hindu woman who is in a violent or abandoning marriage has, under the existing rules of Hindu personal law in Bangladesh, virtually no legal recourse. She cannot obtain a divorce, because Hindu personal law in Bangladesh does not recognize divorce for most Hindus. She cannot claim a share of her husband's property, because the rules of inheritance give her only a limited life interest. She cannot easily return to her family of origin, because doing so would require her own family to take on the financial burden of supporting her and because the social stigma of a woman leaving her husband's home is severe in Dalit communities as in all communities of the caste hierarchy. And she cannot easily find alternative economic support, because the occupational confinement of the Dalit community means that her employment options are limited to the most poorly paid and most physically demanding work.

The 2025 Amnesty International report on Dalit sanitation workers in Bangladesh captured this intersection of gender, caste, and economic disadvantage in the specific context of women who work in sanitation roles in coastal districts. The report found that these women endure what it calls extreme exclusion: they lack basic water connections in their own homes despite spending their working days cleaning up the water-related infrastructure of more prosperous communities. They are excluded from decision-making processes about the working conditions and living arrangements that directly affect them. And they face climate-related risks, including floods and cyclones, without the protective resources that are available to communities higher in the caste hierarchy and higher in the economic order.

CHAPTER FIVE: COMPARATIVE ANALYSIS: INDIA'S LEGAL FRAMEWORK FOR ADDRESSING CASTE DISCRIMINATION WITHIN HINDU COMMUNITIES

5.1 The Protection of Civil Rights Act, 1955

The Protection of Civil Rights Act of 1955, known before its amendment as the Untouchability Offences Act, is the primary piece of Indian legislation specifically designed to make the

practice of untouchability a criminal offense. The Act was enacted pursuant to Article 17 of the Indian Constitution, which provides that untouchability is abolished and its practice in any form is forbidden, and that the enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law.

The Protection of Civil Rights Act defines the practice of untouchability to include, among other things, the prevention of any person from having access to any shop, public restaurant, hotel, or any other place of public entertainment or resort, or the use of any utensils, articles, or objects used by any person or class of persons in a hotel or restaurant, on grounds of untouchability. It also prohibits the prevention of any person from entering any place of public worship that is open to the public or any section of the public on grounds of untouchability. And it criminalizes the enforcement of any social disability including the prevention of any person from living in any locality, the refusal to sell or dispose of any goods, articles, or services on grounds of untouchability.

The Act is significant for the Bangladesh analysis for several reasons. First, it provides a concrete legislative model for what a specifically anti-untouchability statute in Bangladesh might look like. Second, its definition of the prohibited practices provides a useful catalogue of the forms that untouchability-based discrimination takes in practice, forms that are directly observed in the situation of Dalit Hindus in Bangladesh. Third, its enforcement record in India, which has been extensively studied and found to be deeply inadequate, provides important lessons about what legislative reform alone can and cannot achieve in the face of deep-rooted social discrimination.

The enforcement record of the Protection of Civil Rights Act in India reveals a pattern of systematic underenforcement that is familiar from the broader literature on anti-discrimination law. Cases are frequently not registered by the police, who are themselves often from upper-caste communities and share the assumptions of the caste hierarchy. Prosecutions that are registered often result in acquittals because witnesses are unwilling to testify out of fear of retaliation. Penalties under the Act are in many cases too mild to function as effective deterrents. And the civil society infrastructure needed to support victims of caste-based discrimination in pursuing their legal remedies has historically been underdeveloped.

These failures have produced two types of reform responses in India. The first is the strengthening of the criminal law through the Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act of 1989, which provides more severe penalties for caste-based offences and creates specific procedural protections for victims. The second is the development of a broader movement for the structural reform of the enforcement system, including efforts to increase the representation of Dalits in the police force, the judiciary, and the administrative service, so that the institutions responsible for enforcing the anti-discrimination law are less likely to be captured by upper-caste interests.

5.2 The Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act, 1989

The Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act of 1989, known universally in India as the Atrocities Act or the SC/ST Act, is the centerpiece of the Indian legal framework for addressing caste-based discrimination and violence against Dalit and Adivasi communities. Its enactment followed a recognition that the Protection of Civil Rights Act of 1955 was insufficient to address the most severe forms of caste-based violence and that a more comprehensive and more robustly enforced criminal statute was needed.

The Act defines a wide range of offences against Scheduled Castes and Scheduled Tribes, including forcing a member of a Scheduled Caste or Scheduled Tribe to drink or eat any inedible or obnoxious substance, dumping excreta, waste matter, or dead animals in the premises of a member of such community, forcing a woman of such community to go naked or to be paraded naked, forcing a member of such community to leave his house or village, corrupting or fouling the water of a spring, reservoir or any other source used by members of such communities, preventing members of such communities from using common property resources or from exercising their rights, insulting or intimidating with intent to humiliate members of such communities, assaulting or using force on a member of such communities, corrupting or fouling drinking water sources, and a range of other specific offences.

The Act also provides for the establishment of Special Courts to try offences under the Act, the appointment of Special Public Prosecutors to prosecute cases, and the creation of a Relief and Rehabilitation Fund to provide compensation and relief to victims. The 1989 Act was strengthened by a significant amendment in 2015, which added several new offences, including the use of bonded labour, the installation or placing of certain named derogatory images or signs in the neighborhoods of Scheduled Caste and Scheduled Tribe communities, and the garlanding of persons with footwear or forcing them to perform acts designed to humiliate them. The 2015 amendment also strengthened the procedural protections for victims, including a provision that a victim's statement recorded by an officer of the rank of a Deputy Superintendent of Police or above shall be deemed equivalent to a statement recorded before a Magistrate.

The Atrocities Act has been the subject of a significant and controversial judicial decision by the Supreme Court of India. In Dr. Subhash Kashinath Mahajan versus State of Maharashtra, decided in 2018, a two-judge bench of the Supreme Court issued directions that significantly weakened the Act's procedural protections, including a direction that preliminary inquiries should be held before registering FIRs under the Act and a direction that no arrest should normally be made without prior approval of a senior officer. These directions were widely criticized by Dalit rights organizations and human rights bodies as effectively creating a two-tier system of criminal procedure that treated offences against Dalits as less serious than other criminal offences. The directions provoked a massive protest across India in April 2018, in which several people were killed and hundreds were arrested.

The Parliament of India responded by enacting an amendment to the Atrocities Act in 2018 that effectively nullified the Subhash Kashinath Mahajan directions. The constitutional validity of that amendment was upheld by a Constitution Bench of the Supreme Court in Prathvi Raj

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Chauhan versus Union of India, decided in 2020, which held that the 2018 amendment was a valid exercise of Parliament's legislative power and did not violate any fundamental right.

The developments in the Indian law on caste-based atrocities continue through 2024 and 2025. The National Crime Records Bureau reports for these years document both the persistence of caste-based violence across Indian states and the continuing challenges of enforcement, including high rates of case withdrawal, low conviction rates, and systematic barriers to registration of FIRs in many states. The Supreme Court has issued multiple directions in 2024 and 2025 in suo motu proceedings on the implementation of the Atrocities Act, addressing specific failures of enforcement and directing state governments to take remedial action. These developments illustrate both the importance of having a strong statutory framework and the limits of what statutory reform alone can achieve in the face of deep social resistance.

5.3 The Mandal Commission and Reservations: Affirmative Action as a Legal Tool

The Indian legal response to caste-based discrimination has not been limited to criminal law. The most consequential legal tool that India has deployed to address the structural inequality created by the caste system is the system of reservations, or positive discrimination, in education and public employment for members of Scheduled Castes, Scheduled Tribes, and what have come to be called Other Backward Classes.

The constitutional authorization for reservations is provided by Articles 15(4) and 16(4) of the Indian Constitution, which permit the state to make special provision for the advancement of socially and educationally backward classes of citizens and for Scheduled Castes and Scheduled Tribes in admission to educational institutions and in appointments to public employment. The Mandal Commission, formally the Backward Classes Commission established in 1979, recommended in its report of 1980 a range of measures to address the situation of Other Backward Classes, including a 27 percent reservation in central government jobs and educational institutions. The implementation of the Mandal Commission's recommendations by the government of V.P. Singh in 1990 provoked intense controversy and a wave of self-immolation protests by upper-caste students, but was ultimately upheld by the Supreme Court in Indra Sawhney versus Union of India in 1992, subject to a cap of 50 percent on total reservations.

The reservation system in India has been extensively studied and its effects are contested. Critics argue that reservations entrench caste identity rather than transcending it, that they have primarily benefited the more prosperous segments of the Scheduled Caste and Scheduled Tribe communities at the expense of the most marginalized, and that they generate resentment and conflict rather than social integration. Defenders argue that reservations have been essential to creating a Dalit professional class with the resources and the institutional position to challenge upper-caste dominance in public life, that the evidence of economic and educational improvement among Scheduled Caste communities supports the case for reservations, and that the alternatives, including reliance on the criminal law alone or on market forces, have proven wholly inadequate.

For Bangladesh, the reservation debate is directly relevant to the question of what policy tools might be effective in addressing the situation of Dalit Hindus. Bangladesh does have a quota system in public employment, but it has not historically been specifically targeted at Dalit communities. The quota reforms introduced by the interim government following the student protests of July 2024, which abolished the quotas for descendants of liberation fighters and restructured the system toward merit-based selection with smaller quotas for disadvantaged groups, have been analyzed in detail in the political science literature but have not specifically addressed the position of Dalit Hindus. The question of whether a Bangladesh-specific version of the affirmative action framework would be politically feasible and practically effective in addressing the educational and occupational marginalization of Dalit Hindus is one that reform advocates must grapple with seriously.

5.4 Recent Indian Judicial Developments on Caste and Personal Law

The intersection of caste with Hindu personal law has been the subject of significant judicial attention in India in recent years, and the developments in 2024 and 2025 are directly relevant to the analysis of reform options in Bangladesh.

The Supreme Court of India's decision in Vineeta Sharma versus Rakesh Sharma, decided in 2020, established that the amendment to the Hindu Succession Act granting daughters equal coparcenary rights with sons applied retrospectively and with full force even where the father had died before the amendment came into force. The retrospective operation of the equality principle in this decision is philosophically significant: it treats the principle of gender equality in inheritance not as a new right created by legislation but as a recognition of a pre-existing entitlement that the earlier law had wrongfully denied. The court's articulation of this position has implications for the broader argument about the constitutional status of discriminatory personal law rules.

In 2024, the Supreme Court of India issued a significant decision on the constitutional validity of practices that exclude women from positions of authority in Hindu religious institutions. The court, in a case arising from the practices of a Sabarimala-related institution, reiterated the principle established in the Indian Young Lawyers Association versus State of Kerala decision of 2018 that exclusionary practices based on notions of ritual purity and pollution cannot claim constitutional protection as matters of essential religious practice when they operate to deny the fundamental equality of women or persons of lower caste. This principle has potentially significant implications for the question of caste-based exclusion from Hindu religious institutions in both India and Bangladesh, though the application of the Indian precedent to the Bangladeshi context requires careful analysis of the differences between the two constitutional frameworks.

The High Court of Madras, in several decisions in 2024 and 2025 arising from the administration of Tamil Nadu's Hindu religious and charitable endowments law, addressed the question of caste-based discrimination in the appointment of archakas or priests to Hindu temples. The court held, in line with the Supreme Court's earlier decision in Seshammal versus State of Tamil Nadu, that the state could not use the appointment of archakas as a vehicle for promoting caste-based

discrimination, and that the principles of constitutional equality required that the appointment process be open to persons of all castes, subject to their having the requisite ritual qualifications. These decisions represent an ongoing judicial engagement with the intersection of caste and religion that is directly relevant to the reform of Hindu law in Bangladesh.

CHAPTER SIX: THE INTERNATIONAL LAW FRAMEWORK AND THE 2024 UNIVERSAL PERIODIC REVIEW

6.1 Caste Discrimination as a Form of Racial Discrimination Under International Law

One of the most significant developments in the international law framework for addressing caste-based discrimination has been the recognition by the Committee on the Elimination of Racial Discrimination that descent-based discrimination, including caste-based discrimination, falls within the scope of the International Convention on the Elimination of All Forms of Racial Discrimination. Article 1(1) of that Convention defines racial discrimination to mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin that has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms.

The Committee's General Recommendation No. 29 on Descent, adopted in 2002, stated explicitly that the Convention prohibits descent-based discrimination, including discrimination on the basis of caste. The General Recommendation called on states parties to take a range of specific measures to address caste discrimination, including collecting statistics on the composition of the population on a caste basis, enacting specific criminal law provisions against untouchability and caste-based discrimination, ensuring equal access to all public places and services for persons of all castes, and providing equality of opportunity in employment and education regardless of caste.

Bangladesh ratified the International Convention on the Elimination of All Forms of Racial Discrimination in 1979 and is therefore bound by its provisions, including as interpreted by the General Recommendation No. 29. The Committee on the Elimination of Racial Discrimination has periodically reviewed Bangladesh's compliance with its obligations under the Convention and has repeatedly expressed concern about the persistence of caste-based discrimination in Bangladesh and the absence of effective legal remedies. The Committee's concluding observations on Bangladesh's reports have consistently called on the government to enact specific legislation prohibiting caste discrimination, to take affirmative measures to address the educational and economic marginalization of Dalit communities, and to disaggregate its data on the population by caste to enable effective monitoring of progress toward equality.

The High-Level Commemoration of the 60th Anniversary of the Convention in Geneva in December 2025, at which the International Dalit Solidarity Network's Executive Director Meena Varma spoke on the importance of recognizing caste discrimination as falling within the Convention's scope of descent-based discrimination, brought renewed international attention to

the issue. The IDSN's statement at that commemoration emphasized that caste discrimination, despite sixty years of formal international prohibition under the Convention, remains endemic across South Asia including in Bangladesh, and called for a more robust and operationally specific international framework for enforcement.

6.2 The 2024 Universal Periodic Review and Its Recommendations

At the 55th session of the Human Rights Council in March 2024, Bangladesh's review under the Universal Periodic Review highlighted critical recommendations focused on eliminating caste-based discrimination, with specific references to the plight of the Dalit community. These recommendations were crucially also accepted by the state. Idsn This acceptance of the UPR recommendations represents a significant political development: by accepting the recommendations in the international forum, the government of Bangladesh has committed itself to a course of action that its domestic advocates for reform can now invoke as an international obligation.

The UPR process revealed a strong international call for Bangladesh to enhance its legislative framework, with several countries recommending the rapid implementation of the anti-discrimination bill, pending since 2022. This bill is crucial as it seeks to protect against discrimination on multiple grounds including caste, which directly impacts the Dalit community. Idsn The specific countries whose recommendations addressed caste discrimination included Peru, Romania, and Barbados, reflecting the genuinely global character of the international concern about this issue.

Despite the acknowledgment of these issues in the international arena, the intervention by Bangladesh's Ambassador Permanent Officer in Geneva did not directly address the ongoing challenges faced by Dalits nor specifically mention caste discrimination. However, in response to an oral statement from the International Service for Human Rights, the Bangladeshi government referenced Article 20 of the Constitution, affirming its commitment to non-discrimination on the basis of caste, ethnicity, and religion. Idsn The government's reference to Article 20 of the Constitution is somewhat curious since the principal anti-discrimination provision of the Bangladesh Constitution is Article 28, not Article 20, but the broader point of the constitutional commitment was clear.

The gap between the acceptance of UPR recommendations and their implementation is a well-documented feature of the UPR system, and Bangladesh's record in this regard is not exceptional. The International Dalit Solidarity Network and its partner organizations have noted that recommendations made at earlier UPR reviews of Bangladesh, including at the 2009 and 2013 reviews, were accepted at the time but have seen minimal implementation. The organizations have called for the Bangladesh government to move from accepting recommendations to implementing them, and for the international community to use its monitoring mechanisms to hold Bangladesh accountable for the commitments it has made.

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6.3 The CEDAW Framework and Dalit Women

The Convention on the Elimination of All Forms of Discrimination Against Women, which Bangladesh ratified in 1984, provides an international law framework specifically addressed to the situation of women, including Dalit women, who face discrimination in the domain of personal law. CEDAW's Article 2 commits states parties to pursue a policy of eliminating discrimination against women and to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women. CEDAW's Article 15 requires states parties to accord women equality with men before the law and the same legal capacity as men. And CEDAW's Article 16 requires states parties to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations.

Bangladesh's ratification of CEDAW came with reservations on several articles, including Articles 2, 13(a), and 16(1)(c) and 16(1)(f), on the grounds of conflict with Sharia law. But as has been noted in earlier parts of this treatise and as the Prothom Alo analysis cited in the research base for this part observes, these reservations were framed in terms of Sharia law and therefore do not apply to the situation of the non-Muslim population including Hindus. The CEDAW reservations provide no justification for failing to reform Hindu personal law in ways that would bring it into conformity with the Convention's requirements of equality for women. The CEDAW Committee has made precisely this observation in its concluding observations on Bangladesh, noting that the government's obligations under CEDAW apply to its treatment of the personal law of all religious communities, not only to matters governed by Muslim personal law.

The CEDAW Committee's General Recommendation No. 39 on the rights of indigenous women and girls, adopted in 2022, provides specific guidance on the situation of women from marginalized communities including Dalit women. The General Recommendation emphasizes the importance of addressing the intersectional discrimination faced by women who belong to multiple marginalized groups, including discrimination based on both gender and caste, and calls on states parties to adopt comprehensive legislative frameworks that address this intersectional discrimination rather than treating gender and caste discrimination as separate and sequential problems.

6.4 The 2025 Amnesty International Report and Its Legal Implications

The Amnesty International report "Left Behind in the Storm: Dalit Women Sanitation Workers and the Fight for Water and Dignity" (2025) reveals how Dalit sanitation workers in Bangladesh, especially women in coastal Khulna and Satkhira districts, endure extreme exclusion. Idsn This report, published in 2025, is significant not only as a human rights documentation but as a piece of evidence about the specific forms and consequences of caste-based discrimination that can be used in advocacy before international and domestic bodies.

The report's findings about water access and climate vulnerability are particularly significant from a legal perspective. The right to water has been recognized as a human right by the United Nations General Assembly in its Resolution 64/292 of 2010, and it is increasingly accepted that

the failure to provide equal access to clean water on grounds of caste constitutes a violation of that human right. The climate vulnerability finding is relevant to the Bangladesh government's obligations under the Paris Agreement and related international climate frameworks, which recognize the need for climate adaptation measures that specifically address the situation of the most vulnerable communities. The Amnesty International report's documentation that Dalit sanitation workers in Bangladesh's coastal districts are among the most climate-vulnerable communities in a country already severely affected by climate change provides a specific and concrete connection between caste discrimination and the international climate justice agenda.

At the Eighteenth session of the UN Forum on Minority Issues in 2025, IDSN delegates highlighted the urgent need to address caste discrimination, violence and exclusion across South Asia. Dalit delegates from South Asia raised concerns around institutional impunity, structural marginalisation of Dalit women and the shrinking civic space for human rights defenders. Idsn The reference to shrinking civic space for human rights defenders is particularly relevant to the situation in Bangladesh post-August 2024, where the political environment has created new challenges for civil society organizations working on minority rights issues.

CHAPTER SEVEN: PHILOSOPHICAL AND JURISPRUDENTIAL ANALYSIS

7.1 The Theory of Recognition and Its Application to Caste

The German philosopher Axel Honneth, building on the work of Hegel, has developed an influential theory of social justice grounded in the concept of recognition. Honneth argues that the struggle for social justice is fundamentally a struggle for recognition: for the acknowledgment by social institutions and by other individuals of the value, worth, and dignity of each person. He identifies three spheres of recognition, each corresponding to a different dimension of human self-development: the sphere of love and emotional attachment, in which recognition takes the form of care and affection; the sphere of legal relations, in which recognition takes the form of rights; and the sphere of social solidarity, in which recognition takes the form of esteem for the particular contributions of each person to the shared life of the community.

Caste-based discrimination represents a radical failure of recognition in all three spheres. In the sphere of love, the practices of untouchability that prevent Dalits from sitting at the tables of others, from sharing food and water with persons of higher caste, and from entering the homes of others constitute a denial of the most basic form of social acknowledgment that one human being can extend to another: the acknowledgment of their presence as a fellow human being worthy of ordinary social intercourse. In the sphere of legal relations, the rules of Hindu personal law that deny Dalits the right to marry across caste lines, that render their cross-caste adoptions legally invalid, and that confine them to the lowest status within the inheritance hierarchy constitute a denial of the legal recognition that a just legal system owes to all members of the community it governs. And in the sphere of social solidarity, the assignment of Dalits to the most degrading occupations and the social contempt that accompanies that assignment constitute a denial of the

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social esteem that every member of a community has a claim to based on their particular contributions to the common life.

Honneth's theory provides a powerful philosophical framework for understanding what is wrong with caste-based discrimination that goes beyond the utilitarian analysis of costs and benefits and beyond the rights-based analysis of specific violations. It identifies caste discrimination as an injury to the social fabric itself, as a systematic distortion of the relationships of mutual recognition on which a just and flourishing social order depends. And it suggests that the remedy for caste discrimination is not merely the removal of specific legal disabilities but the reconstruction of the social relationships of recognition in ways that give every person, including every Dalit, the acknowledgment they are owed as a human being of equal worth and dignity.

7.2 The Jurisprudence of Structural Discrimination

The legal theory of structural discrimination, developed most fully in the American constitutional law context by theorists like Owen Fiss, Paul Brest, and Catharine MacKinnon, offers a complementary framework for understanding the legal dimensions of caste-based discrimination that goes beyond the analysis of individual discriminatory acts.

Structural discrimination, as defined by these theorists, refers to the systematic disadvantage produced by social institutions and legal rules that, even without any specific intent to discriminate, operate to perpetuate the inferior social position of members of a subordinated group. The classic example is the facially neutral rule that produces disparate impact: a requirement that all job applicants have a particular level of educational qualification that, because of a history of educational exclusion, effectively excludes members of a subordinated group even though no one intends to discriminate against them.

The rules of Hindu personal law in Bangladesh produce structural discrimination of this kind against Dalit Hindus, but they also contain an additional element that takes the situation beyond pure structural discrimination: the rules are not facially neutral. The caste requirement for valid marriage, the caste requirement for valid adoption, the restrictions on access to religious institutions, these are not neutral rules that produce disparate impacts; they are explicitly caste-based rules that directly target Dalit communities. This explicit caste basis makes the case for reform even stronger than the case for structural discrimination reform, because it requires no demonstration of disparate impact, only the observation that the rules themselves discriminate on a ground that the constitution declares impermissible.

The concept of structural discrimination is also useful for analyzing the broader web of disadvantage in which Dalit Hindus are trapped. The denial of educational opportunities, the confinement to degrading occupations, the exclusion from the networks of social connection through which economic opportunities are accessed, the physical separation of Dalit communities from the broader social infrastructure of towns and cities, all of these are structural features of a social system that perpetuates Dalit disadvantage without requiring any specific discriminatory act by any specific individual. The legal reform agenda for addressing the situation of Dalit Hindus in Bangladesh must therefore be understood not only as a reform of

specific rules but as a challenge to the structural conditions that reproduce disadvantage across generations.

7.3 Intersectionality Theory and Its Application

The concept of intersectionality, developed initially by the African-American legal theorist Kimberle Crenshaw in the context of her analysis of the situation of Black women in American employment law, has been one of the most influential theoretical innovations in legal studies in the last four decades. Crenshaw's central insight was that the experiences of persons who belong to multiple subordinated groups cannot be understood simply by adding together the disadvantages associated with each group membership separately. The situation of a Black woman is not simply the sum of the disadvantage she faces as a Black person plus the disadvantage she faces as a woman; it is a distinct and qualitatively different situation produced by the interaction of race and gender in ways that neither race analysis nor gender analysis alone can capture.

Applied to the situation of Dalit Hindu women in Bangladesh, the intersectionality framework reveals that their situation cannot be adequately understood either through the lens of caste alone, which would treat them as simply Dalits who happen to be women, or through the lens of gender alone, which would treat them as simply women who happen to be Dalits. Their situation is produced by the interaction of caste and gender, and that interaction produces specific forms of disadvantage that neither caste analysis nor gender analysis can see clearly.

The rules of Hindu personal law illustrate this intersection concretely. The inheritance rules of the Dayabhaga system discriminate against women as women: all women, regardless of caste, have more limited inheritance rights than men. But the practical impact of these rules falls disproportionately on Dalit women, because the specific social and economic context of Dalit communities means that the denial of inheritance rights is more likely to leave a Dalit woman without any economic support whatsoever than it is to leave an upper-caste woman in the same position. An upper-caste Hindu widow who is denied inheritance rights may have family connections, educational qualifications, and social networks that provide alternative means of economic support. A Dalit Hindu widow who is denied inheritance rights in a community where the only available occupation is sweeping roads has none of these alternatives. The interaction of caste and gender in the operation of the inheritance rules produces a qualitatively more severe form of deprivation for Dalit women than for upper-caste women.

Similarly, the marriage rules of Hindu personal law discriminate against Dalit communities as communities: the caste requirement for valid marriage confines all persons of lower caste to marriage within their own Jati, limiting their social and economic choices. But this confinement has particularly severe effects for Dalit women, who typically have less education, less geographical mobility, and fewer social connections than Dalit men, and who therefore face a more restricted pool of potential marriage partners and a more severe social cost from any attempt to challenge the caste boundaries of marriage.

The intersectionality analysis has important implications for the design of reform measures. It suggests that reforms that address caste discrimination alone, without attention to gender, will not adequately address the situation of Dalit women. And it suggests that reforms that address gender discrimination alone, without attention to caste, will similarly fail to address the compound disadvantage that Dalit women face. What is required is an integrated reform agenda that addresses the specific intersection of caste and gender in the rules and practices that govern the lives of Dalit women.

7.4 Ambedkar's Jurisprudence and Its Contemporary Relevance

B.R. Ambedkar's jurisprudential thought, developed across his career as a lawyer, constitutional drafter, social reformer, and ultimately a convert from Hinduism to Buddhism, represents the most systematic and the most radical critique of the Hindu caste system from the standpoint of those who have suffered its consequences most severely. His work is directly relevant to the analysis of Hindu law reform in Bangladesh, not only because his intellectual framework provides the most rigorous philosophical account of the injustice of the caste system but also because his practical experience as the drafter of the Indian Constitution illuminates the possibilities and the limitations of using constitutional reform to address caste-based discrimination.

Ambedkar's central argument against the caste system, developed most fully in Annihilation of Caste, is that caste is not merely a social inequality of the kind that economic development or gradual social change might be expected to overcome. Caste is, in his view, a system of graded inequality that is religiously sanctioned and philosophically justified, and that therefore cannot be adequately challenged without a direct confrontation with the religious foundations that sustain it. The caste system, Ambedkar argued, is not a deviation from true Hinduism but a central feature of it, embedded in the foundational texts of the Hindu tradition and reproduced by the religious authority of the Brahmin class who interpret and apply those texts. The reform of the caste system therefore requires not merely legal change but a challenge to the religious authority of the texts that justify it.

This argument is controversial, as it was in Ambedkar's own time when Mahatma Gandhi challenged it by arguing for a reformist interpretation of Hinduism that could accommodate the abolition of untouchability without abandoning the basic framework of the tradition. The Gandhi-Ambedkar debate has continued in modified forms in the subsequent decades and remains one of the central debates in the intellectual history of Indian social thought. For the purposes of the present analysis, what is most important is not to resolve this philosophical debate but to recognize its implications for the legal reform of Hindu personal law in Bangladesh.

Ambedkar's framework suggests that legal reform of the caste-discriminatory rules of Hindu personal law, while necessary and important, will be insufficient unless it is accompanied by a broader social and cultural challenge to the norms and practices that reproduce caste hierarchy in daily life. This is not an argument against legal reform; Ambedkar himself was a devoted legal reformer who believed deeply in the transformative potential of constitutional and statutory

change. It is an argument for realistic expectations about what legal reform alone can achieve, and for the importance of accompanying legal reform with educational, economic, and social programs that address the structural conditions of caste-based disadvantage.

The contemporary relevance of Ambedkar's jurisprudence in Bangladesh extends beyond the specifically Hindu community. His analysis of the relationship between religious authority, social hierarchy, and legal structure has implications for the understanding of personal law systems generally, including the Muslim personal law that governs the majority of Bangladesh's population. His commitment to constitutional democracy as a framework within which the claims of subordinated communities can be pursued without resort to violence remains a vital model for the advocacy of Dalit rights in the highly polarized political environment of post-2024 Bangladesh.

7.5 Legal Pluralism and the Problem of Community Governance

The theoretical framework of legal pluralism, analyzed in detail in Part One of this treatise in relation to the general question of Hindu law's status in Bangladesh's plural legal order, has specific relevance to the question of caste discrimination within Hindu personal law. Legal pluralism, in the strong versions advanced by theorists like John Griffiths, Sally Engle Merry, and Sally Falk Moore, holds that all societies are characterized by the simultaneous operation of multiple normative orders, not all of which are formally recognized by the state, and that the official law of the state is only one of the normative systems that actually govern social life.

Applied to the situation of Dalit Hindus in Bangladesh, the legal pluralist framework reveals a set of normative orders operating simultaneously and in tension with each other. There is the official state law, including the constitution's prohibition on caste discrimination and the rules of Hindu personal law applied by the state courts. There is the normative order of the Hindu community, including the Dharmasastra-derived rules on caste that govern marriage, adoption, and religious practice. There is the normative order of specific Jati communities, which govern the internal social life of each caste group including the practices of untouchability that define Dalit communities' relationships with the rest of the Hindu community. And there are the normative orders developed by Dalit communities themselves, through their own organizational structures, religious practices, and social norms, in response to and partly in resistance to the caste hierarchy.

The legal pluralist analysis reveals that the reform of formal state law, while necessary, is insufficient to address the situation of Dalit Hindus unless it also engages with the other normative orders that shape Dalit lives. The caste rules embedded in Hindu personal law are not merely formal legal rules; they are expressions of a deeper normative order that is reproduced daily through the social practices of the Hindu community. Reforming the formal rules without changing the social practices will produce formal legal equality that masks continued social discrimination. And changing the social practices without reforming the formal rules will leave Dalits exposed to legal penalties for the very acts of social transgression, inter-caste marriage, cross-caste adoption, access to previously restricted religious spaces, that would otherwise represent social progress.

The most sophisticated legal pluralist framework for thinking about this challenge is what Upendra Baxi has called insurgent sociolegal thought: the perspective of those at the bottom of social hierarchies who experience the gap between formal law and lived reality most acutely, and who have developed their own normative frameworks for asserting their dignity and their rights in the face of both formal and informal structures of exclusion. The Dalit rights movement in Bangladesh, represented by organizations like BDERM (the Bangladesh Dalit and Excluded Rights Movement) and associated civil society groups, represents exactly this kind of insurgent sociolegal thought: an assertion of rights and dignity that uses the formal language of constitutional law and international human rights but is grounded in the lived experience of communities that formal law has consistently failed.

CHAPTER EIGHT: REFORM PROPOSALS FOR ADDRESSING CASTE DISCRIMINATION IN HINDU PERSONAL LAW AND BEYOND

8.1 The Legislative Core: Amendments to Hindu Personal Law

The most immediate and legally straightforward reforms needed to address the caste-discriminatory rules of Hindu personal law in Bangladesh are amendments to the substantive rules governing marriage and adoption. These amendments do not require any fundamental reinterpretation of the constitutional framework or any dramatic departure from the trajectory of judicial development in Bangladesh; they require the political will to enact legislation that India enacted more than sixty years ago.

The first and most urgent amendment is the removal of the caste compatibility requirement from the rules governing valid Hindu marriage. A reformed Hindu Marriage Act for Bangladesh, when enacted, should provide explicitly that a valid Hindu marriage does not require the parties to be of the same caste, and that no marriage otherwise valid under Hindu law shall be invalidated on the ground of caste difference between the parties. This amendment should be accompanied by a corresponding amendment to the Special Marriage Act provisions that penalize persons who marry under that Act, removing the loss of adoption rights and the substitution of Succession Act inheritance rules for Hindu inheritance rules that currently attach to inter-caste and inter-religious marriages under the Special Marriage Act. The penalty provisions of the Special Marriage Act are particularly indefensible from a constitutional standpoint: they actively use the legal system to punish those who cross caste lines in their marriage choices, in direct contradiction of the constitutional commitment to non-discrimination on grounds of caste.

The second amendment is the removal of the caste compatibility requirement from the rules governing valid Hindu adoption. A reformed Hindu Adoptions and Maintenance Act for Bangladesh, when enacted, should provide explicitly that a valid Hindu adoption does not require the child to be of the same caste as the adopting parents, and that the best interests of the child shall be the paramount consideration in all adoption decisions. This amendment brings the Hindu adoption rules into conformity with the child rights framework established by the UN

Convention on the Rights of the Child, ratified by Bangladesh in 1990, which establishes the best interests of the child as the primary consideration in all decisions affecting children.

These two specific amendments would remove the most explicit and most legally indefensible caste discriminatory rules from the Hindu personal law of Bangladesh. But they are not sufficient to address the full range of caste-based disadvantage that Dalit Hindus face. The inheritance rules, the rules on access to religious institutions, and the broader social practices of caste discrimination require a more comprehensive reform agenda.

8.2 An Anti-Discrimination Act for Bangladesh

The single most important general legislative reform needed to address caste-based discrimination in Bangladesh, beyond the specific amendments to Hindu personal law, is the enactment of the comprehensive anti-discrimination bill that has been under consideration since 2022 and that multiple countries recommended be enacted during the 2024 Universal Periodic Review. The anti-discrimination bill would establish a general prohibition on discrimination by both public authorities and private actors on specified grounds including caste, and would create enforcement mechanisms including a dedicated Anti-Discrimination Commission with the power to receive complaints, conduct investigations, and recommend remedies.

The model for such an act is available from a number of jurisdictions. The UK Equality Act of 2010, which is one of the most comprehensive anti-discrimination statutes in the common law world, provides a detailed framework covering discrimination in employment, education, housing, and the provision of goods and services. It covers a range of protected characteristics including race, which in the UK has been interpreted to include caste in certain circumstances following the Supreme Court's decision in Chandok versus Tirkey of 2015, which held that caste could constitute an aspect of ethnic origins for the purpose of the Race Relations Act. The South African Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 provides another model, one specifically designed for a society emerging from a history of systematic discrimination.

For Bangladesh, the anti-discrimination act should cover discrimination on grounds including religion, race, caste, sex, disability, and place of origin, consistent with the grounds enumerated in Article 28 of the Constitution. It should apply to both public authorities and private actors in specified domains. It should create a dedicated enforcement body with real powers of investigation and remedy. It should provide for both criminal sanctions and civil remedies, recognizing that the criminal law alone is insufficient to address the full range of discriminatory conduct. And it should include specific provisions addressing the intersection of caste and gender discrimination, recognizing the compounded disadvantage faced by Dalit women.

The anti-discrimination act should also include provisions specifically addressing the practices of untouchability that are most directly relevant to the situation of Dalit Hindus. Following the model of the Indian Protection of Civil Rights Act, the Bangladesh act should criminalize the prevention of any person from using or having access to places of public resort or to places of

worship, the enforcement of occupational disabilities on the basis of caste, and the imposition of social penalties on persons who cross caste boundaries in their social relationships.

8.3 Affirmative Measures for Dalit Communities

The anti-discrimination legislative framework described in the preceding section addresses the prohibition of discrimination. But prohibition alone is insufficient to address the structural disadvantage that has been created by centuries of caste-based exclusion from education, employment, and social opportunity. An effective reform agenda must also include affirmative measures that actively work to remedy that structural disadvantage.

The specific affirmative measures that are most urgently needed for Dalit communities in Bangladesh include the following. First, disaggregated data collection by caste in the census and in administrative statistics is a necessary precondition for evidence-based policy making in this area. Without data on the educational levels, employment rates, health outcomes, and income levels of Dalit communities compared to non-Dalit communities, it is impossible to measure the extent of disadvantage or to assess the impact of reform measures. Bangladesh's refusal to collect caste-disaggregated data, which is itself a form of official invisibilization of the Dalit community, must be reversed.

Second, targeted educational support for Dalit children, including scholarship schemes, school feeding programs, and mentoring initiatives that address the specific barriers Dalit children face in accessing and completing education, is essential to breaking the cycle by which the educational deprivation of one generation is transmitted to the next. The enrollment and completion rates of Dalit children in Bangladesh's school system are significantly below the national average, and the gap cannot be closed by anti-discrimination legislation alone. Targeted investment is required.

Third, employment support programs that specifically target Dalit workers, including training programs, placement services, and support for entrepreneurship, are needed to address the occupational confinement that restricts Dalit economic life. These programs should be specifically targeted at women in Dalit communities, who face the additional barrier of gender discrimination in access to employment training and opportunity.

Fourth, housing and infrastructure programs that address the physical segregation of Dalit communities from the main social and economic infrastructure of towns and cities are needed to address the territorial dimension of caste-based exclusion. The Dalit colonies in Bangladesh's cities, documented in detail by the International Dalit Solidarity Network and by Amnesty International, are characterized by overcrowding, inadequate sanitation, lack of water connections, and physical separation from the more prosperous areas of the city. Addressing these conditions requires targeted infrastructure investment, not merely legislative reform.

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8.4 Reform of Religious Institution Governance

The reform of the governance structures of Hindu religious institutions, analyzed in detail in Part Six of this treatise in the context of the protection of Debottar properties, is also directly relevant to the question of caste-based exclusion from religious life. The proposed Hindu Religious Institutions and Endowments Act outlined in Part Six should include specific provisions ensuring that the governance bodies of registered Hindu religious institutions are inclusive of members from all caste communities within the Hindu community, and that the selection of priests and other religious functionaries is conducted without regard to caste in the sense that no person is excluded from consideration solely on grounds of caste membership.

This provision would represent a significant departure from the traditional Brahminic monopoly on priestly functions in Hindu temples. The legal authority for such a provision is provided by the Indian Supreme Court's holdings on the subject, which have consistently held that the state has the power to regulate the conditions under which religious institutions operate, including the conditions for the appointment of priests, without this constituting an impermissible interference with religious freedom, as long as the regulation does not prevent the performance of the religious functions of the institution. A provision that opens the appointment of archakas or priests to persons of all caste backgrounds, subject to their possessing the requisite ritual qualifications, is within this constitutional space.

The political resistance to this provision will be intense, as the experience in Tamil Nadu and other Indian states has demonstrated. But the philosophical case for it is compelling: if Hinduism is understood, as its most sophisticated philosophical traditions understand it, as a religion that affirms the spiritual equality of all persons as manifestations of the divine, then the institutional expression of that religion in its temples and worship spaces should not be organized on principles of caste-based exclusion. The reform of religious institution governance in a direction of greater inclusivity is not an imposition of alien values on Hinduism but a recovery of the best within the Hindu tradition itself.

8.5 A Proposed Anti-Caste Discrimination in Hindu Personal Law Bill

Drawing together the specific reform proposals discussed in the preceding sections, it is possible to sketch the outline of a proposed legislative instrument specifically addressed to the removal of caste discrimination from the rules of Hindu personal law in Bangladesh. Such an instrument might be titled the Hindu Personal Law (Anti-Caste Discrimination) Act, and its principal provisions might be organized as follows.

Part One, preliminary, would set out the title, commencement, and application of the Act, define key terms including caste, Varna, Jati, Dalit, and Scheduled Community, and affirm the constitutional principles of equality and non-discrimination that the Act implements.

Part Two, marriage, would amend the existing rules of Hindu personal law governing marriage to provide that caste compatibility is not a condition of valid Hindu marriage, that no Hindu marriage otherwise valid shall be rendered invalid on the ground of caste difference between the

parties, and that the provisions of the Special Marriage Act imposing civil disabilities on persons who marry across caste or religious lines shall not apply to Hindus.

Part Three, adoption, would amend the existing rules of Hindu personal law governing adoption to provide that caste compatibility between the child and the adopting parents is not a condition of valid Hindu adoption, and that the best interests of the child shall be the paramount consideration in all adoption decisions.

Part Four, inheritance, would affirm the principle of gender equality in inheritance established by the Bangladesh Appellate Division in the Chitta Ranjan Mondol case, extend it explicitly to all categories of Hindu inheritance, and provide that no person shall be denied inheritance rights on grounds of caste.

Part Five, religious practice, would provide that no person shall be denied access to any Hindu place of worship, temple, or religious institution on grounds of caste, that the management bodies of Hindu religious institutions shall include representatives from all caste communities within the Hindu community, and that the performance of any religious office or function within a Hindu religious institution shall not be restricted on grounds of caste alone.

Part Six, enforcement, would create enforcement mechanisms including a right of complaint to the proposed Anti-Discrimination Commission described in the preceding section, a right of civil action for damages for breach of the Act's provisions, and criminal sanctions for the most serious violations including the prevention of access to religious institutions and the imposition of occupational disabilities on grounds of caste.

Part Seven, affirmative measures, would require the government to take specified affirmative measures to address the educational and economic marginalization of Dalit communities, including the collection of caste-disaggregated data, the provision of educational scholarships, and the creation of employment support programs.

CHAPTER NINE: THE POLITICS OF REFORM: NAVIGATING COMPLEXITY IN POST-2024 BANGLADESH

9.1 The Political Context After August 2024

The political environment in Bangladesh following the student-led uprising of July and August 2024 and the formation of the interim government under the leadership of Nobel laureate Muhammad Yunus presents a complex and in some respects paradoxical landscape for the reform of Hindu personal law in general and for addressing caste-based discrimination in particular.

On the one hand, the political transition of 2024 created an opening for reform that had not existed for many years. The previous government's engagement with questions of Hindu

personal law reform had been paralyzed by political calculations: on one hand, the Awami League government drew significant support from the Hindu minority and therefore had an interest in at least appearing sympathetic to their concerns; on the other hand, it was wary of provoking the religiously conservative segments of its political coalition by pushing through reforms that could be characterized as interfering with religious community norms. The result was a pattern of announced reform intentions that consistently failed to materialize in actual legislation, a pattern documented throughout this treatise.

The interim government of 2024-2026 is politically different in important respects. It is not a party government with electoral calculations to manage in the same immediate sense. It has positioned itself as a reform government committed to institutional transformation and good governance. And it has engaged with international actors, including the United Nations and various foreign governments, in ways that create channels through which international advocacy for Dalit rights can influence domestic policy. The interim government's response to the 2024 UPR recommendations, while not immediately translating into specific legislation, at least expressed openness to the legislative framework that multiple countries recommended.

On the other hand, the political environment post-2024 is also characterized by features that make reform difficult. The surge of violence against the Hindu minority in August and September 2024 created a context of fear and vulnerability within the Hindu community that has, paradoxically, made it harder for progressive elements within the community to advocate publicly for legal reform. Reform advocates who call for the removal of caste barriers in Hindu personal law can find themselves accused, by conservative Hindu community leaders, of undermining communal solidarity at a moment of crisis. The argument, however cynical, has political traction: when the community is under external threat, internal reform debates can be framed as divisive distractions from the more urgent work of collective defense.

This argument is both politically understandable and analytically mistaken. The internal reform of Hindu personal law, including the removal of caste-discriminatory provisions, is not a diversion from the project of protecting the Hindu community; it is a necessary component of that project. A community that denies legal equality to its Dalit members, that uses the formal mechanisms of personal law to perpetuate caste hierarchy, is not a community that can make a credible claim to the equal protection of the law. The moral authority of the Hindu community's claim to protection from communal violence is strengthened, not weakened, by its willingness to extend to all its members, including its Dalit members, the equality and dignity it demands for itself.

9.2 The Role of the Dalit Rights Movement

The Dalit rights movement in Bangladesh, organized through groups like BDERM (the Bangladesh Dalit and Excluded Rights Movement), FAIR (the Foundation for Advancement of Inclusive Reforms), and the Bangladesh Horijon Oikko Porishad, has made significant strides in recent years in bringing the issue of caste-based discrimination to national and international attention. These organizations have contributed to UPR submissions, engaged with international bodies including the International Dalit Solidarity Network, produced documentation of the

conditions facing Dalit communities, and advocated for the anti-discrimination legislation that remains pending.

The Dalit rights movement in Bangladesh faces the specific challenge of operating in a context where the government, the mainstream Hindu community leadership, and the Muslim majority all have reasons to avoid engaging seriously with caste discrimination. The government has preferred to frame its engagement with the Hindu minority in terms of religious minority rights rather than caste rights, treating the Dalit issue as a sub-category of the broader minority question. The mainstream Hindu community leadership, which is predominantly upper-caste, has a direct interest in maintaining the caste hierarchy that gives it authority within the community. And the Muslim majority political culture has largely treated caste discrimination as an internal Hindu problem, overlooking the ways in which caste-based discrimination affects Muslim Dalits and the ways in which the failure to address caste discrimination reinforces the broader pattern of structural inequality in Bangladeshi society.

The strategic challenge for the Dalit rights movement is therefore to find political allies across these different constituencies. Within the Hindu community, progressive upper-caste individuals and organizations who are committed to the constitutional principles of equality and who recognize the moral and political costs of maintaining caste hierarchy provide a potential base of support. Within the Muslim majority, secular civil society organizations, human rights groups, and the academic community provide potential allies who share the commitment to constitutional democracy and the rule of law that is the foundation of the reform agenda. And within the international community, organizations like the International Dalit Solidarity Network, human rights bodies, and donor governments provide resources, visibility, and diplomatic pressure that can complement domestic advocacy.

9.3 The Law Commission and Legislative Process

The Bangladesh Law Commission, established under the Law Commission Act of 1996, has historically been one of the mechanisms through which proposals for legal reform have been developed and advanced. The Commission submitted a proposed bill on Hindu inheritance in 2012 seeking equal inheritance rights for Hindus regardless of gender, a proposal that was not enacted in the face of conservative community opposition. The Commission has not specifically addressed caste discrimination within Hindu personal law in any of its published reports, but it is a potential vehicle for developing the kind of systematic, evidence-based reform proposals that a successful legislative campaign would require.

Engaging the Law Commission to undertake a comprehensive review of caste discrimination in Hindu personal law, with a mandate to recommend specific legislative reforms, would serve several strategic purposes. It would create a formal institutional record of the problem and its legal dimensions. It would generate recommendations that carry the authority of a state body rather than merely the advocacy of civil society. It would provide a vehicle for structured consultation with both the Hindu community and the broader public. And it would create a specific legislative agenda that reform advocates could campaign for.

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The interim government's reform agenda, which has encompassed a wide range of institutional changes since August 2024, provides an opening for this kind of Law Commission engagement. The government's stated commitment to institutional reform and good governance creates a political context in which a Law Commission review of caste discrimination in Hindu personal law could be framed not as a concession to minority community demands but as part of the broader project of bringing Bangladesh's legal framework into conformity with its constitutional principles.

9.4 International Advocacy and its Limits

The international advocacy dimension of the Dalit rights campaign in Bangladesh has become more prominent in recent years, particularly through the UPR process and through the documentation activities of international NGOs. The 2024 UPR recommendations, the 2025 Amnesty International report, and the engagement of the International Dalit Solidarity Network at multiple UN forums have collectively raised the international visibility of the issue of Dalit rights in Bangladesh.

But international advocacy has its limits as a tool for domestic legal reform, and those limits are particularly relevant in the post-2024 political context. The Bangladesh interim government, like its predecessors, is sensitive to perceptions of foreign interference in domestic affairs. The framing of any reform demand as coming primarily from international pressure rather than from domestic civil society risks allowing the government to dismiss it as externally imposed. Effective international advocacy must therefore be carefully calibrated to support and amplify domestic advocacy rather than substituting for it.

The most effective model of the relationship between international and domestic advocacy is what has been called the boomerang pattern by international relations scholars Thomas Risse and Kathryn Sikkink: domestic civil society organizations partner with international advocates to bring pressure on governments through international forums, creating a situation in which the government faces both international scrutiny and renewed domestic demands for change. The Dalit rights campaign in Bangladesh has elements of this boomerang pattern, with BDERM and associated organizations working alongside international partners to bring the issue to the UPR and to other international forums while simultaneously campaigning for specific legislative changes at home.

CHAPTER TEN: PHILOSOPHICAL TRADITIONS WITHIN HINDUISM ON CASTE REFORM AND THEIR JURISPRUDENTIAL SIGNIFICANCE

10.1 The Bhakti Tradition as a Resource for Anti-Caste Reform

The Hindu tradition contains within itself powerful intellectual and spiritual resources for challenging the caste hierarchy, resources that are too often overlooked in both the advocacy literature and the academic analysis of caste discrimination. The most important of these internal

resources is the Bhakti movement, the tradition of devotional Hinduism that arose in different parts of the Indian subcontinent from approximately the seventh century CE and produced a series of poets, saints, and theologians who challenged the authority of the Brahminic caste hierarchy from within the tradition.

The Bhakti poets wrote in the vernacular languages of their regions rather than in Sanskrit, the language of the upper-caste scholarly tradition, and they addressed their devotional poetry to a God who, in their understanding, was equally accessible to persons of all castes. The Tamil saint poets known as the Alvars included members of lower castes; the Marathi saint Tukaram was from a Shudra community; the poet Kabir was born into a weaver family that had converted to Islam, and his poetry challenged with extraordinary directness the distinction between Hindu and Muslim and between high and low caste; and the poet Ravidas, who is revered by Dalit communities across South Asia, was himself from a low-caste leather-working community and gave voice in his poetry to the experience of living at the bottom of the caste hierarchy while asserting the spiritual equality of all persons before the divine.

The Bhakti tradition has direct jurisprudential significance for the analysis of caste discrimination in Hindu personal law, because it provides an authoritative internal tradition of the Hindu religion itself that challenges the legitimacy of the caste hierarchy. When reform advocates argue that the caste rules of Hindu personal law should be removed, they can draw on the Bhakti tradition to show that this reform is not an imposition of alien values on Hinduism but a recovery of a strand of thought that has always existed within the tradition. The Bhakti tradition demonstrates that the equation of Hinduism with caste hierarchy, while politically powerful, is historically false: there have always been Hindus who challenged the caste system from within the tradition, and the tradition of their thought is rich, sophisticated, and genuinely Hindu.

The specific jurisprudential resource that the Bhakti tradition offers is what might be called the principle of divine democracy: the principle that the divine is equally accessible to all persons regardless of caste, gender, or ritual purity, and that therefore the institutional arrangements of the religious community should reflect this equal accessibility. Applied to the rules of Hindu personal law, this principle supports the removal of caste barriers in marriage and adoption, the opening of religious institutions to persons of all castes, and the replacement of a system of graded legal disabilities based on caste birth with a system of equal legal rights for all members of the Hindu community.

10.2 The Arya Samaj and the Neo-Vedantic Reform Tradition

The nineteenth-century Hindu reform movements, particularly the Arya Samaj founded by Dayananda Saraswati in 1875 and the Brahmo Samaj founded by Ram Mohan Roy in 1828 and continued by Debendranath Tagore and Keshab Chandra Sen, provided a more intellectually systematic challenge to the caste hierarchy than the Bhakti tradition, one that engaged directly with the textual foundations of the caste system and attempted to provide alternative interpretations of the foundational texts that would support equality.

The Arya Samaj's critique of the caste system drew on a reinterpretation of the Vedic concept of Varna that emphasized its merit-based rather than its birth-based dimension. Dayananda Saraswati argued that the fourfold division of society described in the Vedas was based on the qualities and actions of individuals rather than on the accident of their birth, and that therefore the hereditary transmission of caste status was a corruption of the true Vedic teaching. This reinterpretation allowed the Arya Samaj to advocate for the abolition of the birth-based caste hierarchy while remaining within the Hindu tradition.

The Bengal-based Brahmo Samaj took a different but equally influential approach. Ram Mohan Roy, who was deeply influenced by both Western Enlightenment thought and the Upanishadic philosophy of the Hindu tradition, argued that the essential teaching of Hinduism, properly understood, was a form of rational monotheism that had no need for caste hierarchy, untouchability, or any of the other practices that the Dharmasastra tradition had legitimized. His advocacy against Sati, the practice of widow immolation, was the most politically prominent of his reform campaigns, but his broader intellectual project was the reconstruction of Hindu thought on the basis of reason and equality.

Both the Arya Samaj and the Brahmo Samaj had significant influence in Bengal, and their legacy is relevant to the reform of Hindu law in Bangladesh. The intellectual tradition of the Bengali reform movements, which produced thinkers like Rabindranath Tagore and Swami Vivekananda in addition to Roy and his immediate successors, provides a rich resource for reform advocates who want to ground their case in the intellectual heritage of Bengal rather than in imported frameworks.

The jurisprudential significance of the reform tradition is that it demonstrates the availability, within the Hindu tradition itself, of interpretive resources that support egalitarian principles. The reform traditions of the nineteenth and twentieth centuries did not abandon Hinduism; they reconstructed it on egalitarian foundations. The legal reform of Hindu personal law in Bangladesh can draw on the same intellectual heritage, arguing not that Hindu law must be abandoned in favor of some secular alternative but that Hindu law, properly understood in the light of its own best philosophical traditions, demands equality rather than hierarchy, dignity rather than degradation, and the recognition of every person's worth regardless of the accident of caste birth.

10.3 Ambedkar's Conversion and the Limits of Internal Reform

Ambedkar's decision in 1956, shortly before his death, to formally convert from Hinduism to Buddhism, along with hundreds of thousands of his followers, represents the most dramatic statement in the modern period of the limits of internal reform as a strategy for addressing caste discrimination. Ambedkar had spent decades attempting to reform Hinduism from within, arguing for the abolition of the caste system and the equal treatment of Dalit communities. When he concluded that this internal reform was not achievable, he chose a path outside the tradition, finding in Buddhism's foundational commitment to the equality of all sentient beings a philosophical framework more congruent with his vision of a just society.

Ambedkar's conversion has had significant consequences in India, where the Dalit Buddhist movement, sometimes called Neo-Buddhism or Navayani Buddhism, has become an important community of several million persons, centered particularly in Maharashtra. In Bangladesh, there has been no comparable mass conversion movement among Dalit Hindus, though there have been individual conversions. The question of whether internal reform or exit from the tradition is the more appropriate strategy for Dalit communities is one that remains contested and politically sensitive.

For the jurisprudential analysis of this treatise, what is most significant about Ambedkar's conversion is not the conversion itself but the philosophical argument that led to it. Ambedkar's argument was not that Buddhism was a true religion and Hinduism a false one, in any simple theological sense. It was that the social and legal institutions of a community are shaped by its foundational philosophical commitments, and that a tradition whose foundational texts legitimate caste hierarchy cannot be reformed by appeals to the tradition's better elements alone; it requires a reconstruction of the foundational commitments themselves. This argument has implications for the legal reform debate that go beyond the specific question of Ambedkar's personal choice.

Applied to the Bangladesh context, Ambedkar's argument suggests that the reform of the caste-discriminatory rules of Hindu personal law will require not merely specific legislative amendments but a broader change in the philosophical and normative self-understanding of the Hindu community in Bangladesh. This change cannot be legislated into existence; it must be cultivated through education, through the recovery and amplification of the egalitarian strands of the Hindu tradition, and through the organizational empowerment of Dalit communities within the broader Hindu community. But it can be supported by legislation that removes the formal legal props of caste hierarchy and signals the state's commitment to the constitutional principles of equality and non-discrimination.

CHAPTER ELEVEN: THE CASTE SYSTEM IN THE DAYABHAGA TEXTS: A CLOSE READING

11.1 Jimuta Vahana on Caste and Personal Law

Jimuta Vahana's Dayabhaga, the foundational text of the school of Hindu law that governs Hindu Bangladeshis, was composed probably in the eleventh or twelfth century CE in the Bengal region. Its primary focus is inheritance law, and it is in this domain that the Dayabhaga school made its most distinctive contributions to the development of Hindu legal thought, most notably the principle that inheritance is transmitted through the act of pinda (ritual food offering) offered to the deceased rather than through the Mitakshara school's concept of birth right in joint family property. But the Dayabhaga text also contains provisions on marriage and adoption that are directly relevant to the analysis of caste discrimination in Hindu personal law.

On the question of valid marriage, the Dayabhaga follows the general Dharmasastra position that the parties to a valid Hindu marriage should be of compatible caste. Jimuta Vahana does not

devote extended discussion to the caste question in the marriage context, treating it as a settled matter of Dharmasastra principle. The relevant provisions are terse but unambiguous: marriage between a Brahmin man and a Shudra woman is classified as Pratiloma, the going-against-the-grain union, and while Pratiloma unions were not absolutely prohibited in all circumstances in the classical tradition, they were treated as inferior to same-Varna marriages and the offspring of such unions as compromised in their ritual status. Marriage between persons of the two extreme positions in the Varna hierarchy, Brahmin and Chandala or outside-Varna, is treated in the commentaries as having no legal validity at all.

These provisions of the Dayabhaga tradition, transmitted through the commentary literature and applied by the colonial courts, became the formal legal rules governing the validity of Hindu marriages in Bengal and hence in Bangladesh. Their application in the colonial courts involved the courts in the enterprise of determining the caste of parties to marriages, adjudicating disputes about the caste status of particular individuals or communities, and resolving conflicts between different accounts of the caste hierarchy. The case law generated by these disputes represents a significant dimension of the colonial legal history of Bengal and provides important evidence about both the flexibility and the rigidity of the caste system in practical application.

11.2 Colonial Case Law on Caste and Marriage Validity

The colonial courts of Bengal developed a substantial body of case law on the relationship between caste and the validity of Hindu marriages, a body of law that remains technically authoritative in Bangladesh today, since the colonial decisions that were not specifically overruled by subsequent legislation or judicial decision remain binding precedents in the Bangladesh courts. Examining this case law is therefore not merely a historical exercise; it is an analysis of the currently operative legal framework.

The most frequently litigated question in colonial cases involving caste and marriage was the question of whether a specific marriage should be recognized as valid given the caste identities of the parties. The courts developed a complex jurisprudence on this question, drawing on the textual tradition, on the evidence of local custom, and on their own judgments about which caste arrangements were consistent with the general principles of Hindu law.

One particularly significant line of cases concerned the marriages of persons who had been excommunicated from their caste, a process known as outcasting or jaat khaoa in Bengali. Under traditional Hindu law, a person who was excommunicated from his Jati lost his ritual status and his legal identity within the community. The Caste Disabilities Removal Act of 1850, as noted earlier in this part, was designed to prevent this loss of civil legal status as a consequence of excommunication. But the relationship between the 1850 Act and the rules of Hindu personal law governing marriage and inheritance was never clearly worked out in the colonial case law, and the question of what civil consequences follow from excommunication for Hindus in Bangladesh remains uncertain.

Another significant line of colonial cases concerned the recognition of marriages between persons of the higher castes and persons of the communities at the bottom of the caste hierarchy.

The courts consistently held that such marriages were not valid Hindu marriages under the Dayabhaga rules, relying on the textual provisions analyzed in the preceding section. But the courts also recognized the validity of marriages according to local custom where the custom was well-established and consistent with the general principles of Hindu law, creating a potential space for the recognition of inter-caste marriages that had the support of both communities involved.

This customary law exception is potentially significant for the contemporary reform analysis. If it can be shown that the practice of inter-caste marriage has become sufficiently widespread and socially accepted within certain communities in Bangladesh to qualify as a recognized local custom, those marriages could be recognized as valid under the customary law exception without requiring specific legislative action. But this is a contingent and uncertain basis for reform, and it should not substitute for the legislative action that is the most appropriate and most durable response to the problem.

11.3 The Commentarial Tradition on Caste and Social Order

The commentarial literature that developed around the Dayabhaga text, including the Dattaka Chandrika on adoption law and the various Nibandha commentaries on the Smritis that were influential in colonial Bengal, provides additional evidence about the way in which the Dayabhaga tradition embedded caste hierarchy in its legal framework. These commentaries are important not only as historical documents but as living texts that continue to influence the interpretation of Hindu personal law in Bangladesh, since the Bengal courts have historically treated these commentaries as authoritative sources in the absence of specific statutory provisions.

The Dattaka Chandrika, which is the most important text in the Dayabhaga tradition on adoption law, states the caste requirement for valid adoption clearly and without ambiguity: the child to be adopted must be of the same caste as the adopting father. The commentary explains this requirement by reference to the ritual function of adoption: since the adopted son must perform the funeral rites of the adopting father, and since the validity of those rites depends on the ritual purity of the person performing them, the son must share the caste purity of the father. A child of lower caste cannot perform the rites that maintain the ritual integrity of the adopting family.

This ritual justification for the caste requirement in adoption reveals, with particular clarity, the logic that underlies the embedding of caste hierarchy in Hindu personal law more generally. The rules of personal law are not understood in the Dharmasastra tradition as merely social conventions that could be changed without loss; they are understood as expressions of a ritual order that has cosmic significance. The validity of marriages, the legitimacy of inheritance claims, the efficacy of adoption, all depend in this framework on the maintenance of the proper caste order, because the caste order is understood as expressing the cosmic Dharmic order. To violate the caste rules of personal law is not merely to deviate from social convention; it is to disturb the cosmic order.

This is the deepest intellectual challenge that the reform agenda faces, and it must be acknowledged honestly rather than dismissed. The defense of caste-discriminatory rules in Hindu personal law is not based merely on social prejudice or on the self-interest of upper-caste communities in maintaining their privileges; it is also based on a genuine theological and philosophical conviction about the nature of the cosmic order and the role of the caste hierarchy in maintaining it. Reform advocates must engage with this conviction directly, offering a counter-argument that operates within the tradition's own philosophical framework rather than simply dismissing it as superstition.

The counter-argument available within the tradition is, as we have seen, a rich one. It draws on the Bhakti poets' assertion of divine democracy, on the Arya Samaj's merit-based reinterpretation of Varna, on the Upanishadic principle that the divine reality, Brahman, is equally present in all persons regardless of their social station, and on the reformist traditions of the nineteenth century that reconstructed Hindu thought on egalitarian foundations. These internal resources of the tradition do not simply assert equality as an external standard to which Hindu law must conform; they ground equality in the deepest philosophical commitments of the Hindu tradition itself.

CHAPTER TWELVE: THE NAMASUDRA CASE: CASTE, PARTITION, AND THE LEGAL HISTORY OF DALIT COMMUNITIES IN BENGAL

12.1 Namasudra History and the Partition of Bengal

The history of the Namasudra community, one of the largest Dalit communities in Bangladesh, provides a particularly instructive case study in the intersection of caste-based discrimination with the political history of Bengal that shaped the legal system analyzed throughout this treatise. The Namasudra community, whose name translates roughly as respectable Shudra in what was itself an assertion of dignity against the degradation of the original name by which the community was known, was historically concentrated in the deltaic regions of Bengal, particularly in the Barisal, Faridpur, and Jessore districts that are now part of Bangladesh.

The Namasudra community has a significant history of political mobilization and social reform that predates the partition of Bengal. In the late nineteenth and early twentieth centuries, Namasudra leaders organized a series of movements, known as the Matua movements from the name of the religious tradition that the Namasudra reformer Harichand Thakur founded in the nineteenth century, that challenged the social marginalization of the community and asserted the community's claim to equal respect within the Hindu social order. The Matua religious tradition, which combined elements of Vaishnavite devotionalism with a specific assertion of the dignity and spiritual worth of lower-caste communities, provided the philosophical foundation for the Namasudra political mobilization.

The Partition of Bengal in 1947, and the subsequent communal violence that followed it, fell with particular severity on the Namasudra community. As a lower-caste Hindu community with strong roots in the agricultural economy of East Bengal, the Namasudras were caught between

the demands of the Muslim League's Pakistan project, which treated them as Hindu minorities to be expelled or marginalized, and the Congress movement's Indian nationalism, which offered the promise of constitutional equality but little in the way of specific attention to the needs of lower-caste communities. A large portion of the Namasudra population migrated to West Bengal following partition, becoming refugees in a new country where they faced not only the difficulties of displacement but the social marginalization of lower-caste Hindus in West Bengali society.

Those Namasudra families who remained in what became East Pakistan, and then Bangladesh, faced the additional burden of being both a religious minority and a lower-caste community in a Muslim-majority state that was indifferent to the distinctions of the Hindu caste hierarchy. The violence of partition, the discriminatory effects of the Enemy Property legislation, and the periodic communal violence of subsequent decades all fell on the Namasudra community alongside other Hindu communities. But they also continued to face, within the Hindu community itself, the social marginalization and legal disabilities of caste.

12.2 The Matua Movement and Its Legal Dimensions

The Matua religious movement, founded by Harichand Thakur in the nineteenth century and continued by his son Guruchand Thakur, represents one of the most important indigenous movements for the social and legal reform of the Hindu community in Bengal from the standpoint of lower-caste communities. The Matua tradition's theological insistence on the equal spiritual worth of all persons, combined with its social emphasis on education, self-improvement, and organizational solidarity, provided the Namasudra community with both a philosophical framework and an organizational base for challenging the caste hierarchy.

The legal dimensions of the Matua movement are particularly interesting for the present analysis. Guruchand Thakur, who led the movement in the early twentieth century, engaged directly with the colonial administration to secure educational and employment opportunities for the Namasudra community. His advocacy for the inclusion of Namasudras in the list of depressed classes that were entitled to special educational provisions under colonial policy was one of the first examples of what we would now call affirmative action advocacy by a lower-caste community in Bengal. His engagement with the colonial legal system, including his advocacy before the Bengal Legislative Council for the recognition of Namasudra land rights, represents an early form of the legal mobilization for Dalit rights that has continued to the present day.

The Matua tradition's continued relevance for the reform of Hindu personal law in Bangladesh lies in its demonstration that the demand for equality from lower-caste communities within the Hindu tradition has a long history within Bengal itself, that it is not an imposition from outside but a continuation of an indigenous tradition of social and legal reform. Reform advocates who are aware of this history can position their demands as the continuation of a tradition of self-assertion by the Dalit communities of Bengal that goes back more than a century, and that has deep roots in the religious and cultural life of the communities concerned.

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12.3 The Post-1971 Experience of Dalit Communities in Bangladesh

The experience of Dalit communities in Bangladesh in the period since independence in 1971 has been shaped by several factors that have produced both some positive developments and continued severe disadvantages. On the positive side, the secularist principles of the 1972 constitution, with its explicit prohibition on caste discrimination, created a formal legal framework that offered more protection than the explicitly communal framework of the Pakistani period. Some Dalit leaders have participated in national politics, and some have been appointed to public positions. Civil society organizations working with Dalit communities have grown in number and sophistication.

On the negative side, the constitutional principles have been consistently undermined by the political and social reality of a country where caste-based discrimination is deeply embedded and where the Hindu minority, including its Dalit sub-communities, has historically been politically marginal. The amendments to the constitution that introduced Islam as the state religion, first under the Zia government in 1977 and then more formally under the Ershad government in 1988, did not directly affect the formal anti-caste discrimination provisions, but they signaled a shift in the state's self-understanding that made it harder to invoke the constitutional commitments to equality in the context of religious minority rights.

The political violence associated with elections, particularly the 2014 elections after which Dalit communities experienced significant violence as documented by the IFES report cited in the research base for this part, demonstrates the continued vulnerability of Dalit Hindus to both communal violence and to the specific targeting of their communities during political transitions. The surge of violence following August 2024 repeated this pattern, with Dalit Hindu communities among those most severely affected by the attacks on the Hindu minority.

CONCLUSION TO PART SEVEN

The analysis in this part has attempted to expose the full depth and complexity of the relationship between caste discrimination and Hindu personal law in Bangladesh. That relationship operates at multiple levels simultaneously: in the formal rules of Hindu personal law that embed caste hierarchy in the regulation of marriage, adoption, and religious practice; in the constitutional framework that prohibits caste discrimination but provides inadequate enforcement mechanisms; in the international law obligations that Bangladesh has accepted but consistently failed to fulfill; in the philosophical and theological traditions that both justify and challenge caste hierarchy from within Hinduism; and in the lived experience of the Dalit communities who bear the consequences of the entire system in their daily lives.

The conclusions that emerge from this analysis are sobering but not without hope. The sobering conclusions are these: the caste discrimination embedded in Hindu personal law is not a peripheral or minor feature of the system but is integral to its structure; the constitutional prohibition on caste discrimination is systematically under-enforced and provides inadequate

protection for the most vulnerable communities; and the political conditions for reform, while not entirely unfavorable in the post-2024 environment, face significant barriers in the form of conservative community resistance, government indifference, and the compound vulnerability of Dalit communities who lack the political resources to sustain the sustained advocacy that reform requires.

The hopeful conclusions are these: the intellectual resources for reform are available, within both the Hindu tradition itself and the broader framework of constitutional and international law; the organizational infrastructure for advocacy is developing, with Dalit rights organizations becoming more sophisticated and internationally connected; the international attention to the issue is increasing, as evidenced by the 2024 UPR recommendations and the 2025 Amnesty International report; and the precedents from India and other jurisdictions demonstrate that reform is legally feasible and has been achieved in comparable political contexts.

What is needed above all is the combination of sustained intellectual argument, organized advocacy, and political will that has driven every successful reform of unjust legal systems throughout history. The reform of the caste-discriminatory rules of Hindu personal law in Bangladesh will not happen quickly or easily. But the case for it is overwhelming, rooted in the deepest commitments of the constitutional order, the most universal principles of international human rights law, and the best philosophical traditions of Hinduism itself. The thirteen million citizens of Bangladesh who identify as Hindu, and the five to six million Dalit Bangladeshis who live at the bottom of the social hierarchy that caste has created, deserve a legal system that treats them as full human beings possessed of equal dignity, equal rights, and equal capacity for self-determination. That legal system is what this treatise is dedicated to helping build.

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Part Eight of this treatise will examine the law of Hindu maintenance in Bangladesh in detail: the classical Dharmasastra provisions on the duty of maintenance, their colonial transformation into enforceable legal obligations, the specific rules governing the maintenance rights of Hindu wives, widows, children, and aged parents under the Dayabhaga school as operative in Bangladesh, the inadequacy of existing maintenance law from the standpoint of the rights of dependent persons, the relationship between maintenance law and the broader question of economic security for Hindu women and children, the interaction of maintenance law with property law and inheritance law in creating the overall economic position of Hindu women in Bangladesh, and the reform proposals that would create a comprehensive and adequate statutory framework for Hindu maintenance, drawing on the Family Courts Act of 2023 and on comparative developments in India and Nepal.

PART EIGHT

The Law of Hindu Maintenance in Bangladesh: Dharmic Obligation, Colonial Fossilization, Constitutional Failure, and the Imperative of Comprehensive Reform

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FOREWORD TO PART EIGHT

There is a particular kind of legal cruelty that operates through inaction rather than through commission. It is not the cruelty of a law that directly harms those who come before it, though

such laws exist in abundance in the domain of Hindu personal law in Bangladesh, as this treatise has documented across its preceding parts. It is the cruelty of a legal system that recognizes a problem, acknowledges a human need, provides a framework that promises relief, and then surrounds that promise with so many conditions, so many procedural obstacles, so many normative presumptions against the person seeking relief, that the promise becomes effectively unreachable for those who need it most. This is the cruelty that characterizes the law of maintenance for Hindu women and dependent persons in Bangladesh.

Maintenance, in the Hindu legal tradition, is not a recent invention or a concession to modernity. It is one of the oldest and most fundamental obligations recognized by the Dharmasastra tradition: the duty of those with the means to support those without. The Manusmriti declares that a man who abandons his dependent wife and children is guilty of a grave moral offense. The Yajnavalkyasmriti establishes the specific obligations of support that a householder owes to his wife, his children, his parents, his siblings, and his dependent relatives. The commentarial literature elaborated these obligations in considerable detail, specifying who was entitled to maintenance, under what conditions, in what form, and for how long. The concept of maintenance in Hindu law is, in this sense, a recognition of the fundamental ethical truth that persons who are economically dependent on others have a claim on those others that the law should recognize and enforce.

But the gap between this ethical vision and the legal reality confronting a Hindu woman seeking maintenance in Bangladesh today is so vast as to constitute not merely an injustice but a systemic failure of the legal order. The Hindu Married Women's Right to Separate Residence and Maintenance Act of 1946, the primary statutory instrument governing the maintenance rights of Hindu wives in Bangladesh, is a colonial-era statute of severely limited scope, restricted to married women, conditioned on the demonstration of specific grounds for separation, and subject to interpretive barriers that have been consistently reinforced by judicial decisions that emphasize the indissolubility of the Hindu marriage bond at the expense of the practical welfare of the women trapped within it. For Hindu widows, for Hindu children, for aged Hindu parents, and for Hindu dependent relatives more broadly, the maintenance law is even less developed: it consists primarily of principles drawn from the classical texts, applied by courts through a jurisprudential tradition that is simultaneously ancient in its origins and inadequate in its contemporary application.

This part of the treatise undertakes a comprehensive examination of the law of Hindu maintenance in Bangladesh. It traces the classical Dharmasastra foundations of maintenance as a legal obligation. It examines the colonial transformation of those foundations into the specific legal rules that govern maintenance claims in Bangladesh today. It analyzes in detail the Hindu Married Women's Right to Separate Residence and Maintenance Act of 1946, its scope, its limitations, its judicial interpretation in Bangladesh, and the specific ways in which its architecture disadvantages the women it purports to protect. It examines the maintenance rights of persons other than married women, including widows, children, and aged parents, and the inadequacy of the current legal framework in protecting those rights. It analyzes the relationship between maintenance law and the broader property and inheritance framework, showing how the denial of inheritance rights to Hindu women makes maintenance claims more important while

simultaneously making them harder to enforce. It undertakes a comparative analysis of the Indian maintenance framework under the Hindu Adoptions and Maintenance Act of 1956 and the recent judicial developments in India in 2024 and 2025 that have significantly shaped the interpretation and application of that framework. It examines the international law framework and its implications for the reform of Hindu maintenance law in Bangladesh. And it sets out comprehensive reform proposals for the creation of a statutory framework that would give the maintenance rights of Hindu persons in Bangladesh the legal force and practical effectiveness that justice and the constitution demand.

CHAPTER ONE: THE CLASSICAL DHARMASASTRA FOUNDATIONS OF MAINTENANCE

1.1 The Concept of Bharana-Poshana in Hindu Legal Philosophy

The Dharmasastra tradition approaches the duty of maintenance through a conceptual framework that is at once philosophical, ethical, and practically specific. The Sanskrit terms most commonly used for the duty of maintenance in the classical texts are Bharana and Poshana, terms that carry the meanings of bearing, supporting, and nourishing. These terms are not merely technical legal concepts; they evoke a moral and emotional relationship of care and sustenance that the Hindu legal tradition treats as one of the primary obligations of the householder.

The foundation of the maintenance duty in the Dharmasastra tradition is the concept of the joint Hindu family, the institution of co-residence and co-commensality that classical Hindu social organization treated as the natural and normative form of family life. In the joint family, as understood by the classical texts, all members eat from the same kitchen, worship at the same domestic altar, and share a common pool of resources under the management of the Karta, the senior male head of the family. Within this framework, the question of maintenance is not primarily a question of legal entitlement but of moral obligation: the Karta is obligated to maintain all members of the joint family from the joint family resources, and the failure to do so is a moral failure of the first order as well as a legal one.

The Manusmriti addresses the duty of maintenance in several chapters. In the chapter on the duties of householders, Manu specifies that the householder must maintain his mother, father, teacher, wife, son, daughter, and guests. The omission of any of these obligations is treated as a serious moral failure. The Yajnavalkyasmriti is more specific: it provides that the husband must maintain his wife, that sons must maintain their aged parents, that the joint family must maintain its dependent members, and that the failure to provide maintenance is grounds for specific legal remedies.

P.V. Kane's analysis in the History of Dharmasastra identifies three distinct categories of maintenance obligation in the classical tradition. The first is the husband's duty to maintain his wife, which is treated as absolute and unconditional during the marriage, subject only to the limitation that the wife must be faithful to her husband and must not have abandoned the

household without just cause. The second is the duty of the joint family to maintain its dependent members, including sons who have not yet established independent households, daughters who remain unmarried or who have returned to the parental home, and parents who are no longer able to maintain themselves from their own resources. The third is the obligation of children to maintain their aged and infirm parents, which the tradition treats as one of the most sacred of all duties, rooted in the concept of Pitru Rina, the debt owed to one's parents for the gift of life and the labor of upbringing.

1.2 The Wife's Claim to Maintenance: Conditions and Extent

The wife's right to maintenance under the classical Dharmasastra tradition is both comprehensive in its normative scope and deeply ambiguous in its practical implementation. On the one hand, the texts are clear that a husband is obligated to maintain his wife: this obligation is treated as one of the fundamental duties of the married man and is grounded in the very concept of the marriage bond as a relationship of mutual obligation. On the other hand, the texts condition the wife's entitlement to maintenance on her fulfillment of the duties of a Hindu wife, including fidelity, obedience, residence in the husband's home, and the performance of domestic and ritual duties. A wife who was unfaithful, who left her husband's home without permission, or who converted to another religion could, under the classical rules, be denied maintenance.

This conditionality of the maintenance right on the wife's conduct reflects a fundamental asymmetry in the classical Hindu understanding of marriage. The husband's obligation to maintain is treated as arising from his status as husband and from the obligations he accepted at the time of marriage. But the wife's entitlement to maintenance is treated as contingent on her continuing to fulfill the role of a proper Hindu wife. This asymmetry is deeply problematic from a contemporary human rights perspective, because it means that the very circumstances that most commonly generate the need for maintenance, including a husband's cruelty, desertion, or taking of a second wife, may be characterized as constituting the wife's failure to fulfill her marital duties if the wife's response to the husband's conduct involved leaving the marital home or ceasing to perform the domestic services expected of her.

The colonial courts' interpretation of the classical rules on the wife's maintenance right generally followed this conditional structure while attempting to introduce some equitable modifications. The leading cases established that a wife who left her husband's home because of his cruelty, desertion, or failure to maintain her was entitled to maintenance despite the separation, on the principle that the separation was caused by the husband's wrongful conduct rather than by the wife's default. This principle, expressed in cases like Matangini versus Yogendra decided by the Calcutta High Court in 1892, became part of the foundational case law of Hindu maintenance in Bengal and established the basic framework that was later codified in the Hindu Married Women's Right to Separate Residence and Maintenance Act of 1946.

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1.3 Maintenance of Widows, Children, and Other Dependents

Beyond the wife's right to maintenance during the subsistence of the marriage and in the event of justified separation, the Dharmasastra tradition recognizes a range of other maintenance obligations that are significant for the legal analysis of Hindu maintenance law in Bangladesh.

The widow's right to maintenance from the joint family resources is one of the most practically significant of these obligations. Under the classical rules, a widow who has not remarried is entitled to be maintained from the joint family property that her deceased husband would have shared had he lived. This right is sometimes described as a widow's estate or widow's right, and it is the source of the concept of limited female estate that has been so controversial in the inheritance law analysis undertaken in Part Three of this treatise. The widow's maintenance right is the classical alternative to full inheritance rights: instead of inheriting a share of the property outright, the widow is entitled to maintenance from it. This is a less satisfactory arrangement than full inheritance from the contemporary perspective, because it makes the widow's economic security dependent on the continuing goodwill of the other members of the joint family rather than giving her independent control over resources, but it does represent a recognition of the widow's claim on the family's assets.

The maintenance of children under Hindu law is addressed in the context of the joint family obligation to support all members who have not yet established independent households. Minor children are entitled to be maintained by the joint family without any specific legal proceedings; their maintenance is a straightforward consequence of their membership in the family. The maintenance of adult children who are unable to maintain themselves because of physical or mental disability is also recognized, though the extent of this obligation and its application in specific circumstances has been the subject of considerable litigation.

The maintenance of aged parents is, as noted above, one of the most solemnly treated obligations in the Dharmasastra tradition. The concept of Pitru Rina, the debt to one's parents, is grounded in the philosophical framework of the three debts, the three fundamental obligations that every Hindu is said to owe: to the gods, to the sages, and to one's parents and ancestors. The legal expression of the debt to parents is the obligation to maintain them in their old age and to perform the appropriate funeral rites after their death. The Bangladesh Maintenance of Parents Act of 2013, which creates a statutory obligation for all citizens regardless of religion to maintain their parents, represents the modern codification of this ancient principle in a form that applies across religious communities.

1.4 The Dayabhaga School's Specific Contributions to Maintenance Law

The Dayabhaga school of Hindu law, which governs Hindu Bangladeshis, does not depart dramatically from the general Dharmasastra framework on maintenance in its classical formulation. Jimuta Vahana's Dayabhaga text focuses primarily on inheritance and succession and does not contain an extended treatment of maintenance law. The maintenance rules applicable in Bengal under the Dayabhaga tradition were derived primarily from the general

Smriti provisions, particularly the Yajnavalkyasmriti and the Manusmriti, as interpreted through the commentarial literature.

But the Dayabhaga school's distinctive approach to the concept of joint family property and inheritance has indirect consequences for the operation of maintenance law in practice. The Dayabhaga school's rejection of the Mitakshara concept of birth-right in joint family property, its insistence that property passes to heirs only upon the death of the holder rather than being vested in all coparceners from birth, means that the joint family in the Dayabhaga system is a less legally significant institution than in the Mitakshara system. There is no Dayabhaga equivalent of the Mitakshara coparcenary, the body of persons who together hold rights in the joint family property from the moment of birth. This difference has consequences for maintenance law because it means that the widow's or dependent relative's claim to maintenance from joint family property is, in the Dayabhaga system, a claim against the estate of the deceased rather than against a continuing joint family property that is shared among living members.

The Bengal cases on widow's maintenance, many of which were decided by the Calcutta High Court in the colonial period and which constitute the primary authorities for Bangladesh courts, developed a specific jurisprudence on the nature and extent of the widow's maintenance claim that draws on this Dayabhaga approach to property. The cases established that a widow in the Dayabhaga system is not merely entitled to maintenance from the income of the joint family property; she has a right to a fair and adequate provision for her maintenance, calculated by reference to the resources of the estate and the standard of living to which she was accustomed during the marriage. This standard, which anticipates the modern concept of reasonable maintenance, represents one of the more equitable features of the Dayabhaga tradition on maintenance.

CHAPTER TWO: THE COLONIAL TRANSFORMATION OF MAINTENANCE LAW

2.1 The Creation of the Colonial Legal Framework

The encounter between the British colonial legal system and the Dharmasastra maintenance tradition produced a hybrid legal framework that preserved the normative structure of the classical rules while subjecting them to the rationalizing pressures of the colonial courts. The East India Company's Regulation VII of 1793 and subsequent regulations established the framework within which the courts would apply Hindu personal law to disputes between Hindus, including disputes about maintenance. The courts were directed to apply the laws and usages of the parties in questions of marriage, inheritance, and succession, and this general directive was interpreted to include maintenance claims.

The colonial courts' approach to Hindu maintenance involved a characteristic combination of deference to the textual tradition and practical modification in the interests of justice as the courts understood it. The deference to tradition meant that the courts applied the classical conditions on the wife's entitlement to maintenance, requiring her to demonstrate that her

separation from her husband was justified by his conduct. The practical modification meant that the courts developed a relatively expansive interpretation of what constituted justifiable cause for separation, including not only the specific grounds mentioned in the texts but also a general category of conduct so unreasonable that it was unsafe or improper for the wife to continue living with the husband.

The most important early colonial case on Hindu maintenance in Bengal was decided by the Calcutta High Court in the latter decades of the nineteenth century. The court established, in a series of decisions, the fundamental principle that a Hindu wife who is driven from her husband's home by his wrongful conduct, or who is compelled to live apart from him by circumstances for which she is not responsible, retains her right to maintenance. These decisions were groundbreaking in their time because they asserted the courts' authority to protect the economic interests of Hindu women even when the classical texts could be read as supporting the denial of those interests.

2.2 The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946

The Hindu Married Women's Right to Separate Residence and Maintenance Act of 1946 represents the most important statutory development in Hindu maintenance law in the colonial period in Bengal, and it remains the primary statutory framework governing the maintenance rights of Hindu wives in Bangladesh today, nearly eighty years after its enactment. Understanding the Act in its historical context, its scope, its limitations, and its operation in contemporary Bangladesh is essential to the analysis of what reforms are needed.

The 1946 Act was enacted by the Bengal Legislative Assembly in the final years of British rule and was designed to codify and expand the case law that the colonial courts had developed on the wife's right to maintenance during separation. The legislative history of the Act reflects the reformist pressures that were building in the final years of colonial rule, particularly the advocacy of women's organizations and progressive lawyers who recognized the inadequacy of the purely case-law based approach to the protection of Hindu wives' maintenance rights.

The Act's core provision is Section 2, which specifies the circumstances in which a Hindu wife is entitled to an order for separate residence and maintenance. These circumstances are: first, if the husband is suffering from any loathsome disease not contracted from the wife; second, if the husband is guilty of cruelty as renders it unsafe or undesirable for the wife to live with him; third, if the husband has any other wife living; fourth, if the husband has without reasonable cause deserted the wife; fifth, if the husband has ceased to be a Hindu by renouncing the religion or has been converted to another religion; and sixth, for any other reasonable cause.

The most significant feature of the Act for purposes of the contemporary analysis is the requirement that the wife demonstrate one of these specific grounds for separation before she can obtain maintenance. This requirement reflects the foundational assumption of the Act: that the Hindu marriage is an indissoluble union that should not be lightly severed, and that a wife who seeks to live apart from her husband must justify her separation by reference to his wrongful conduct. This assumption is not merely conservative in spirit; it is structurally disadvantageous

to the wife in practice, because it places the burden of proof on the person who is typically in the weaker position in terms of both economic resources and access to evidence.

The sixth ground, "any other reasonable cause," provides some flexibility in the Act's application and has been used by progressive courts to expand the range of circumstances in which maintenance can be awarded. But the interpretation of this residual ground has been inconsistent across different courts and different periods, and it does not provide the systematic protection that a modern maintenance framework would require.

The Act also contains significant limitations in its definition of who can benefit from its provisions. The Act applies only to married women, not to widows, not to children, not to parents, and not to any other category of dependent person. The maintenance rights of these other categories of persons are therefore governed entirely by the uncodified case law, a situation that generates uncertainty, inconsistency, and barriers to access that would be substantially reduced by a comprehensive statutory framework.

2.3 The Section 488 Framework and Its Application to Hindus

In addition to the specific Hindu maintenance statute of 1946, Hindu wives and dependent persons in Bangladesh have historically been able to seek maintenance through the general criminal law framework provided by Section 488 of the Code of Criminal Procedure of 1898, which was subsequently renumbered and modified in different versions of the Code, and which has now been largely supplanted by the family court framework established by the Family Courts Ordinance of 1985 and the Family Courts Act of 2023.

Section 488 of the Code of Criminal Procedure provided that if any person having sufficient means neglects or refuses to maintain his wife, his legitimate or illegitimate children, and his father or mother unable to maintain themselves, a Magistrate of the first class could order such person to make a monthly allowance for the maintenance of such persons. This provision was, in principle, applicable to persons of all religions including Hindus, and it provided a summary criminal law procedure for obtaining maintenance that was faster and less expensive than a civil suit.

The application of Section 488 to Hindus raised specific problems because of the conditions the classical Hindu law placed on the wife's entitlement to maintenance. The courts had to grapple with the question of whether a Hindu wife who had left her husband's home without demonstrating one of the grounds specified in the 1946 Act was entitled to maintenance under Section 488, or whether the conditions of the Hindu maintenance statute applied to limit the general criminal law right. The case law on this question was inconsistent, and the inconsistency reflected a deeper tension between the constitutional commitment to equal protection and the specific rules of Hindu personal law.

The Family Courts Ordinance of 1985 and the Family Courts Act of 2023 created a specialized family court system with jurisdiction over matrimonial causes including maintenance claims for all religious communities. The Family Courts Act of 2023 represents the most recent statutory

framework and supersedes the 1985 Ordinance in most respects. The Family Courts have jurisdiction to hear maintenance claims under the applicable personal law of the parties, which for Hindu parties means the 1946 Act and the relevant case law. But the Family Courts Act does not itself establish any new substantive rights of maintenance for Hindus; it merely provides the procedural forum within which the substantive Hindu maintenance law is applied.

2.4 The Gopal Chandra Case and the Indissolubility Doctrine's Impact on Maintenance

The Supreme Court of Bangladesh's decision in Gopal Chandra versus Mitali Rani Chandra, decided in 2010 and reported at 16 MLR (AD) 2010 23-26, is the most significant Bangladeshi appellate authority on the relationship between the indissolubility of the Hindu marriage and the right to maintenance, and its implications deserve careful analysis.

In this case, the Appellate Division reaffirmed the principle that Hindu marriage is sacred and indissoluble, and held that the absence of any provision for divorce in Hindu personal law as operative in Bangladesh means that the courts cannot grant a decree of dissolution of marriage to Hindu parties. This holding, while legally correct as a statement of the existing law, has significant and harmful consequences for the maintenance claims of Hindu women.

The consequences operate through the following mechanism. In systems where divorce is available, the dissolution of the marriage creates a specific and clearly defined legal relationship between the former spouses with respect to financial obligations. The divorced wife's entitlement to maintenance or alimony is typically calculated on the basis of a comprehensive assessment of both parties' financial positions, the duration of the marriage, the contributions each made to the family's economic and domestic life, and the reasonable needs of the dependent spouse going forward. This comprehensive approach, which the Indian courts have been developing through an increasingly sophisticated body of case law including the landmark decisions of 2024 and 2025 analyzed later in this part, provides a framework for maintenance determinations that is both principled and practically adequate.

But in Bangladesh, where divorce is not available for Hindus, the maintenance framework operates differently. A Hindu woman who is living apart from her husband because of his cruelty or desertion is not a divorced wife seeking alimony; she is a married woman who has obtained an order for separate residence and maintenance. The maintenance she receives is therefore governed not by the post-divorce alimony framework but by the maintenance-during-marriage framework of the 1946 Act. And this framework, as the following sections demonstrate, is significantly less adequate than a properly designed post-divorce framework would be.

CHAPTER THREE: THE HINDU MARRIED WOMEN'S RIGHT TO SEPARATE RESIDENCE AND MAINTENANCE ACT, 1946: A DETAILED DOCTRINAL ANALYSIS

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3.1 The Structure of the Act

The Hindu Married Women's Right to Separate Residence and Maintenance Act of 1946 is a short statute, consisting of only three substantive sections beyond the preliminary provisions. Section 1 establishes the title and application. Section 2 specifies the grounds on which a wife is entitled to an order for separate residence and maintenance. Section 3 provides that a wife shall not be entitled to separate residence or maintenance if she is unchaste or if she ceases to be a Hindu by conversion to another religion.

This spare structure reveals both the limited ambitions of the legislation and the assumptions that shaped it. The Act was designed to codify a specific set of judicial principles that had been developed by the colonial courts; it was not designed to create a comprehensive statutory framework for Hindu maintenance that would address all possible situations in which a dependent person might require support from a family member. The result is a statute that addresses one specific situation, the married wife seeking maintenance during separation, while leaving a vast range of other maintenance claims to the uncodified case law.

3.2 The Six Grounds Under Section 2: Analysis and Critique

The six grounds specified in Section 2 of the 1946 Act as entitling a Hindu wife to separate residence and maintenance deserve careful individual analysis, because the interpretation of each ground has been the subject of significant litigation and the interpretation of the courts has had a profound practical impact on the accessibility of the Act's protections.

The first ground, the husband's suffering from a loathsome disease not contracted from the wife, is one of the more unusual provisions of the Act. Its inclusion reflects the historical context in which the Act was drafted: the early twentieth century, when sexually transmitted diseases were both more prevalent and more socially stigmatized than they are today, and when a wife's exposure to a husband's disease was understood as a specific harm that justified her living apart. The contemporary application of this ground raises questions about which diseases qualify as loathsome in the current medical and social environment, and about the requirement that the disease not have been contracted from the wife, which places on the wife the burden of demonstrating a negative fact that may be practically impossible to prove.

The second ground, cruelty, is the most frequently litigated of the six grounds and the most practically significant. The courts have defined cruelty broadly to include not only physical violence but also sustained mental cruelty, neglect, humiliation, and conduct that endangers the wife's mental or physical health. The Calcutta High Court case of Matangini versus Yogendra, decided in 1892, established the foundational principle that cruelty sufficient to entitle the wife to separate residence need not rise to the level of physical danger; it is sufficient that the husband's conduct renders it unsafe or undesirable for the wife to continue living with him. This broad formulation was progressive for its time and has been applied by subsequent courts in ways that have expanded the practical scope of the cruelty ground.

But the cruelty ground also imposes a burden on the wife that is disproportionate in practice. To establish cruelty, the wife must prove her claim before the Family Court, often without access to legal representation and in the face of a husband who may deny her allegations and produce witnesses to support his denial. The evidentiary difficulties are compounded by the social stigma attached to a woman who takes her husband to court, by the family and community pressure to reconcile rather than litigate, and by the practical impossibility of continuing to live in the marital home while simultaneously seeking maintenance.

The third ground, polygamy, or the husband having another wife living, is significant because it addresses directly the legal status of polygamy in Hindu personal law. As analyzed in detail in Part Two of this treatise, polygamy is not prohibited under Hindu personal law in Bangladesh; a Hindu man may legally take a second wife without dissolving the first marriage. The 1946 Act recognizes the injustice of compelling the first wife to continue living with a polygamous husband by including the second marriage as a specific ground on which she can seek separate residence and maintenance. But the Act does not go further and prohibit polygamy itself, which means that the legal system simultaneously tolerates a practice and recognizes it as a harm to the first wife that entitles her to relief. This inconsistency reflects the deeper incoherence of a legal system that has failed to reform the underlying substantive law.

The fourth ground, desertion without reasonable cause, provides protection for wives who have been abandoned by their husbands. The definition of desertion in the Hindu maintenance context, which requires both the factual absence of the husband and the absence of reasonable cause for that absence, has been the subject of some litigation. Courts have held that a husband who leaves the family home to take up employment elsewhere without making adequate provision for his wife's maintenance has effectively deserted her for the purposes of the Act, even if he returns periodically.

The fifth ground, the husband's renunciation of Hinduism or conversion to another religion, reflects the classical Dharmasastra principle that the conversion of a Hindu affects the legal status of his family relationships. The inclusion of this ground in the 1946 Act is connected to the concern, discussed in earlier parts of this treatise, about Hindu women converting to other religions to escape unsatisfactory marriages or to obtain access to divorce under the personal law of the religion they have converted to. But the provision as framed in the 1946 Act creates an asymmetry: if the husband converts, the wife is entitled to separate residence and maintenance; if the wife converts, she loses her entitlement under Section 3 of the Act. This asymmetry is constitutionally problematic under Article 28 of the Bangladesh Constitution, which prohibits discrimination on grounds of religion, and is one of the provisions most urgently in need of reform.

The sixth ground, any other reasonable cause, is the residual category that has provided the courts with the flexibility to adapt the Act's protections to circumstances not specifically addressed in the first five grounds. Courts have used this ground to award maintenance to wives who have been excluded from the marital home by the husband's family, to wives who are suffering from health conditions that make continued cohabitation impracticable, and to wives who are in situations of economic vulnerability that the husband's misconduct has created but

which do not clearly fall within the specific grounds. The openness of this residual ground is its greatest strength and its greatest weakness: it provides flexibility, but it also creates uncertainty, because the range of circumstances that qualify as "reasonable cause" is ultimately a matter of judicial discretion that varies across different judges and different courts.

3.3 Section 3 and the Conditions that Disentitle the Wife

Section 3 of the 1946 Act provides that a wife shall not be entitled to separate residence or maintenance under Section 2 if she is unchaste or if she has ceased to be a Hindu by conversion to another religion. These two conditions of disentitlement reflect the classical Dharmasastra rules on the conditional nature of the wife's maintenance right and have been among the most contested aspects of the Act in both colonial and post-colonial judicial interpretation.

The unchastity condition is the more problematic of the two. The requirement that the wife claiming maintenance demonstrate her chastity is not merely a practical obstacle; it is a normative statement about the nature of the wife's entitlement. By making maintenance conditional on the wife's chastity, the Act treats the wife's body as a condition of her economic security: her claim on her husband's resources depends not merely on the fact of the marriage or on his wrongful conduct, but on her continued sexual fidelity to him. This is deeply objectionable from a contemporary human rights perspective, because it treats women's sexuality as an economic commodity in the most direct and literal sense: the wife's right to economic support is contingent on the preservation of the husband's exclusive sexual access to her.

The courts in Bangladesh and in India (in the period before the 1956 Act superseded the 1946 Act in India) have struggled with the application of the unchastity condition in cases where the wife's alleged unchastity is disputed. In practice, the defense of unchastity has frequently been used by husbands as a litigation strategy to defeat legitimate maintenance claims rather than as a genuine assertion of a marital breach: by alleging the wife's unchastity, the husband forces her to defend her character before the court, creating a form of secondary victimization that reinforces the power asymmetry of the marital relationship.

The conversion condition, as noted above, creates a discriminatory asymmetry by treating the wife's conversion to another religion as a bar to maintenance while treating the husband's conversion as a ground for maintenance. This asymmetry is difficult to justify on any principled basis and represents one of the clearest examples of the way in which the existing law uses the maintenance framework to penalize women who exercise choices about their religious identity.

3.4 The Quantum of Maintenance: Standards and Determinations

The 1946 Act does not itself specify how the amount of maintenance is to be calculated. This omission leaves the determination of the maintenance quantum entirely to judicial discretion, guided by the general principles developed in the case law. The leading Bangladeshi cases on the quantum of Hindu maintenance have established that the amount should be calculated by reference to the husband's means and ability to pay, the wife's standard of living during the

marriage and her reasonable needs in the separated state, and the presence of any independent means that the wife may have.

This standard is broadly consistent with the approach taken in other jurisdictions, but its application in practice raises serious concerns. The absence of specific legislative guidance on the factors to be considered and the method of calculation creates wide variation in maintenance awards across different courts and different judges, generating unpredictability for parties seeking or defending maintenance claims. The absence of any provision for periodic review and adjustment of maintenance awards means that an award made at one level of the husband's income may become inadequate as inflation and changing circumstances alter the practical meaning of a fixed monetary sum. And the absence of any mechanism for the automatic enforcement of maintenance awards means that a wife who has obtained an award must go through further proceedings to enforce it if the husband does not pay voluntarily, imposing additional burdens on the person who is already in the position of economic vulnerability.

CHAPTER FOUR: MAINTENANCE RIGHTS BEYOND THE MARRIED WIFE: WIDOWS, CHILDREN, AND PARENTS

4.1 The Widow's Right to Maintenance

The widow's right to maintenance in Hindu personal law as operative in Bangladesh represents one of the most important and most contested areas of the entire maintenance framework. As analyzed in detail in Part Three of this treatise, the Hindu widow in Bangladesh does not have full inheritance rights over her deceased husband's property; she has only a limited life interest, known as the widow's estate or widow's right, which entitles her to the income and enjoyment of the property during her lifetime without the right to alienate it. This limited interest is, in the classical understanding, the legal expression of her right to maintenance from the estate.

The practical operation of this widow's maintenance right is, however, significantly less adequate than the theory might suggest. The widow's life interest in the estate is not a right to a specific maintenance payment; it is a right to the enjoyment of the property itself. This means that the widow's economic security depends entirely on the nature of the assets in the estate: if the estate consists of income-producing property such as agricultural land or commercial buildings, the widow can derive income from it. But if the estate consists primarily of non-income-producing assets, or if the estate is too small to generate significant income, the widow's life interest provides very little practical economic security.

Moreover, the widow's right to the estate is subject to the overriding right of the deceased husband's heirs to obtain possession of the property after the widow's death, and this prospective entitlement gives those heirs a significant interest in managing and potentially diminishing the estate during the widow's lifetime. The case law documents numerous instances in which the deceased husband's male relatives have used the complexity of the Hindu maintenance law to challenge the widow's right to the estate, to restrict her access to the estate's income, or to obtain

possession of the estate before the widow's death by arguing that she has forfeited her right through some conduct that the law treats as disqualifying.

The specific conditions that can forfeit a widow's right to the husband's estate include remarriage, which is now permitted by statute but which terminates the widow's entitlement to the deceased husband's property, and unchastity, which the classical texts and the colonial case law treated as forfeiting the widow's right to maintenance from the estate. The application of the unchastity condition to widows is even more problematic than its application to married women, because the widow is a person who has already lost her husband and whose economic security is entirely dependent on her right to the estate. Subjecting her continued enjoyment of that right to a condition of sexual purity is to make her economic survival contingent on the most invasive possible form of social surveillance.

The Bangladeshi courts have not addressed this unchastity condition in any recent landmark decision, and its continued theoretical application represents a serious constitutional problem that reform must address.

4.2 Maintenance of Children Under Hindu Law

The maintenance of minor children under Hindu personal law in Bangladesh is governed by the general principle that the father, as the natural guardian of his minor children, is obligated to maintain them. This obligation is recognized in the case law as absolute during the minority of the child, subject to the qualification that the father must have the means to provide maintenance. The court's jurisdiction to order child maintenance is exercised through the Family Courts framework established by the Family Courts Act of 2023.

The specific questions that arise in the context of child maintenance under Hindu law in Bangladesh include the following. First, the extent of the obligation when the parents are living separately: when a Hindu couple is living apart, either because the wife has obtained an order for separate residence and maintenance or because the husband has effectively deserted the family, the question arises of what maintenance the children are entitled to from the father. The courts have generally held that the father's obligation to maintain his children is not affected by the marital status of the parents, and that children are entitled to maintenance regardless of whether the parents are living together.

Second, the maintenance of adult children who are unable to support themselves: the Dharmasastra tradition recognizes an obligation to maintain adult children who are incapacitated, but the extent of this obligation under the Dayabhaga school as applied in Bangladesh is not clearly defined in the case law. The Bangladesh Maintenance of Parents Act of 2013 does not directly address the maintenance of adult children, and the Hindu personal law's specific provisions on this question are insufficiently developed.

Third, the position of illegitimate children: the Dharmasastra tradition generally recognized an obligation to maintain illegitimate children, though the extent of that obligation was treated as less than the obligation toward legitimate children. The colonial case law on the maintenance of

illegitimate children under Hindu law in Bengal established that a father was obligated to maintain his illegitimate children from the resources of the estate, at least up to the age of majority, though the illegitimate child's right to inherit from the father's estate was significantly more restricted than that of legitimate children.

Fourth, the right of daughters to maintenance when their brother has inherited the estate: under the Dayabhaga rules, daughters are among the recognized heirs to the estate in the absence of male heirs of higher priority, but in practice the estate is most commonly inherited by sons. The question of the daughter's right to maintenance from the estate after it has passed to her brother is addressed in the case law but not clearly in any statute, and the practical enforcement of this right is extremely difficult.

4.3 Maintenance of Aged Parents

The Hindu obligation to maintain aged and infirm parents has been significantly strengthened by the Bangladesh Maintenance of Parents Act of 2013, which creates a statutory obligation across all religious communities to maintain parents who are unable to maintain themselves. The Act provides that every person who is an adult son or daughter, the eldest son or daughter having priority, shall be bound to maintain his or her mother and father who are unable to maintain themselves.

The Maintenance of Parents Act is a significant piece of legislation in the context of Hindu maintenance law because it creates a general obligation that supplements the specific Hindu personal law provisions. For aged Hindu parents who might otherwise have difficulty establishing their maintenance claims through the Hindu personal law case law, the 2013 Act provides a clear statutory basis. The Act's application in the first significant case, Aleya Begum versus Lance Nayek Abul Kalam Azad, in which the Senior Judicial Magistrate Court in Rangamati fined the son and daughter-in-law for refusing maintenance, demonstrates that the courts are willing to enforce the Act seriously.

But the Maintenance of Parents Act, while valuable, does not resolve all the issues that arise in the context of elderly Hindu persons' maintenance rights. The Act is not a substitute for a comprehensive Hindu maintenance statute that would address the specific circumstances and legal framework of Hindu family law. And the Act's general application to all citizens means that it does not engage with the specific features of the Hindu property and inheritance system that affect the maintenance claims of elderly Hindu parents, including the widow's life interest in the estate, the Dayabhaga rules on the partition of joint family property, and the specific obligations that arise under the Hindu joint family system.

CHAPTER FIVE: THE INTERACTION OF MAINTENANCE LAW WITH PROPERTY AND INHERITANCE LAW

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5.1 The Structural Dependence on Maintenance Created by the Denial of Inheritance Rights

The most fundamental context for understanding the inadequacy of the Hindu maintenance framework in Bangladesh is the relationship between maintenance and inheritance. As analyzed in Parts Two and Three of this treatise, Hindu women in Bangladesh do not have full inheritance rights equal to those of male heirs under the Dayabhaga school's rules of succession. A Hindu widow has only a limited life interest in her deceased husband's estate. A Hindu daughter has a contingent and limited right to inherit from her father in the absence of higher-priority male heirs. A Hindu daughter-in-law has virtually no inheritance rights in her husband's family's property during the husband's lifetime.

The consequence of this systematic denial of inheritance rights is that Hindu women's economic security is structurally dependent on maintenance claims. Because women cannot secure economic independence through the ownership of inherited property, they must rely on the ongoing legal obligation of their husbands, fathers, sons, or other male relatives to provide maintenance. This structural dependence makes the maintenance framework more, not less, important than it would be in a system of full inheritance equality: a system that denies women inheritance rights and then provides them with inadequate maintenance protection is doubly unjust.

The structural connection between inheritance deprivation and maintenance dependence also affects the power dynamics of maintenance litigation. A Hindu woman who does not own property and whose economic survival depends on the continuation of her maintenance award is in an extremely weak bargaining position relative to a husband who owns the family assets and who can use the threat of extended and expensive litigation to discourage her from asserting or maintaining her maintenance claim. This power asymmetry is compounded by the practical difficulties of legal access discussed earlier in this part.

5.2 The Widow's Estate as a Maintenance Substitute

The concept of the widow's estate, which in the Dayabhaga tradition represents the widow's right to the enjoyment of her deceased husband's property during her lifetime, is best understood as a maintenance substitute: a legal mechanism that attempts to secure the widow's economic needs without giving her full ownership over the property. This maintenance-substitute character of the widow's estate has been recognized by both the colonial courts and the post-independence courts, and it is the theoretical basis for the widow's claims against the estate in the event that the other members of the family attempt to deny her access to the property.

But the widow's estate as a maintenance substitute has several specific inadequacies that distinguish it from a properly designed maintenance right. First, the widow's estate is a property right, not a personal right: it is a right in specific assets rather than a right to receive a regular payment calculated by reference to her needs. If the assets that constitute the estate decline in value, are damaged, or fail to generate income, the widow's economic security is directly affected in ways that a personal maintenance right would not be. Second, the widow's estate is subject to the supervision and management claims of the reversionary heirs, the persons entitled

to succeed to the property after the widow's death, who have both the motive and the legal standing to challenge the widow's management of the estate. Third, the widow's estate can be forfeited by conduct that the law treats as disqualifying, creating a form of continuous behavioral conditionality that a personal maintenance right would not impose.

The reform of the widow's estate into a full inheritance right, which is one of the central proposals throughout this treatise, would eliminate the inadequacies of the maintenance-substitute approach by giving the widow independent ownership of her portion of the estate. But even if this reform is not achieved in the near term, the maintenance framework should be strengthened to provide the widow with a secure and enforceable right to economic support that does not depend on the goodwill of the husband's male relatives.

5.3 The Maintenance of the Deserted Hindu Wife and the Property Problem

One of the most practically acute problems in the operation of the Hindu maintenance framework in Bangladesh arises in the case of the deserted wife, the woman whose husband has left her without formally ending the marriage and without making adequate provision for her support. The deserted wife, under the existing law, is entitled to maintenance under the fourth ground of the 1946 Act. But her practical ability to obtain and enforce a maintenance award depends critically on the existence of identifiable assets belonging to the husband from which the maintenance can be paid.

When the husband has deserted his wife and left Bangladesh, which is a common pattern in the Hindu communities of border districts, the maintenance award obtained by the wife against the absent husband is effectively unenforceable. There is no mechanism under the existing law for the wife to trace the husband's assets in other jurisdictions, to attach assets in Bangladesh that the husband has left behind, or to enforce a Bangladeshi maintenance award in India or in any other country. The absent husband's property in Bangladesh, if any, may have been transferred to relatives before the desertion specifically to prevent its attachment by the wife. And the wife herself, if she is uneducated and lives in a rural area far from the Family Court, may not even be aware that she has a legal right to maintenance, let alone how to enforce it.

This problem of the deserted wife in the cross-border context is not unique to Bangladesh, but it is particularly severe in Bangladesh because of the legal and social circumstances of the Hindu minority. The movement of Hindu men across the India-Bangladesh border, either to seek economic opportunities in India or to flee communal violence, is a well-documented phenomenon that affects significant numbers of Hindu families. The maintenance framework provides no effective remedy for the wives left behind by this movement, and the reform proposals discussed later in this part must specifically address this gap.

CHAPTER SIX: COMPARATIVE ANALYSIS: THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956, AND ITS SUBSEQUENT DEVELOPMENT IN INDIA

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6.1 The Architecture of the 1956 Act

The Hindu Adoptions and Maintenance Act of 1956, enacted as part of the Hindu Code Bills that transformed Hindu personal law in India in the decade following independence, represents a comprehensive statutory framework for maintenance that provides the most directly relevant model for the reform of Hindu maintenance law in Bangladesh. Understanding the Act's architecture, its substantive provisions, and the subsequent judicial development of its principles is essential to understanding both the possibilities and the limitations of statutory reform in this domain.

The Hindu Adoptions and Maintenance Act of 1956 is organized around two distinct subject matters: adoption, which is addressed in Chapters II and III, and maintenance, which is addressed in Chapter IV. For the purposes of the present analysis, it is Chapter IV, containing Sections 18 through 28, that is directly relevant.

Section 18 of the Act is the foundational provision on the maintenance of the wife. It provides that a Hindu wife, whether married before or after the commencement of the Act, shall be entitled to be maintained by her husband during her lifetime. The section then specifies, in subsection (2), the circumstances in which the wife may claim to live separately from her husband and still be entitled to maintenance: if the husband is guilty of desertion; if the husband has treated her with such cruelty as to cause a reasonable apprehension of injury in her mind; if the husband is suffering from a virulent form of leprosy; if the husband has any other wife living; if the husband has kept a concubine in the house or habitually resides with a concubine elsewhere; if the husband has ceased to be a Hindu by conversion to another religion; and for any other cause justifying the wife's living apart from him.

Comparing Section 18(2) with the grounds specified in the 1946 Act applicable in Bangladesh reveals both similarities and significant differences. The Indian statute is more specific and more protective in several respects. It includes the keeping of a concubine as a specific ground, which the Bangladeshi statute does not. It specifies the virulent form of leprosy rather than the more ambiguous loathsome disease of the Bangladeshi statute. And crucially, Section 18(3) of the Indian Act provides that a Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu, but this condition has been interpreted by the Indian courts with significantly more restraint than the corresponding provision in the Bangladeshi law, in recognition of the constitutional principles of equality and non-discrimination.

Section 19 of the 1956 Act provides for the maintenance of a widowed daughter-in-law: a Hindu is bound to maintain the widow of his predeceased son if the widow is unable to maintain herself from her own property or from the estate of her husband, her father, or her mother. This provision has no direct equivalent in the Bangladeshi statute, and its absence means that Hindu widowed daughters-in-law in Bangladesh have no clear statutory right to maintenance from their deceased husband's family.

Section 20 is one of the most significant provisions of the Indian Act. It provides, in subsection (1), that a Hindu is bound, during his or her lifetime, to maintain his or her legitimate and illegitimate children and his or her aged or infirm parents. Subsection (3) specifically provides that the obligation to maintain an aged or infirm parent or major son or daughter unable to maintain himself or herself extends to the parents and children, and that a Hindu father or mother who is unable to maintain himself or herself from his or her own earnings or other property is entitled to be maintained by his or her son or daughter. The significant feature of this provision for the Bangladesh comparison is its explicit inclusion of daughters as persons obligated to maintain their parents: in the Indian framework, both sons and daughters are obligated to maintain their aged parents, reflecting the principle of gender equality in family obligations that corresponds to the principle of gender equality in property rights established by the Hindu Succession Act.

6.2 Indian Judicial Developments: 2024 and 2025

The Indian courts' engagement with Hindu maintenance law in 2024 and 2025 has produced a body of case law that is directly relevant to the reform analysis for Bangladesh, both as a source of doctrinal principles that could inform Bangladeshi judicial interpretation and as a demonstration of the possibilities of judicial development in this area.

In 2024, Supreme Court judgements brought clarity to several fuzzy areas around marriage and divorce in India. This included clarifying what made a Hindu marriage legitimate under the Hindu personal laws, whether a widow's right over her deceased husband's property sustained after remarriage and the factors to be considered while calculating permanent alimony. Supreme Court Observer

The decision in Parvin Kumar Jain versus Anju Jain, decided in 2024, is particularly significant for the Bangladesh analysis because it establishes a comprehensive framework for calculating permanent alimony in cases of marriage dissolution. In Parvin Kumar Jain, the Court granted divorce under "complete justice" and noted that the key factor while deciding permanent alimony was ensuring that the "dependent spouse is not left without any support and means after the dissolution of the marriage." While noting that alimony should not be driven by the intent of penalising the husband, the Court stated that the amount must be calculated on the basis of the social and financial status of parties, "reasonable needs" of the wife and children, the couple's qualifications and employment status, whether the wife had other income sources, the wife's standard of living in her matrimonial home, her "employment sacrifices" for family, and "reasonable" litigation costs borne by the wife. Supreme Court Observer

The concept of employment sacrifices for the family, recognized by the Indian Supreme Court as a factor in calculating alimony, is a particularly significant development. It reflects the economic reality that many married women, particularly in the socioeconomic contexts relevant to Hindu communities in South Asia, have foregone educational and employment opportunities during the marriage in order to manage the household and raise children. The maintenance calculation that ignores this foregone opportunity is systematically underestimating the economic loss that the dependent spouse has suffered as a result of the marriage, and the Indian Supreme Court's

recognition of this loss as a relevant factor in alimony calculation represents an important advance in the jurisprudence of maintenance.

In Shakti v. Anita (2025), stark educational and financial disparities between spouses influenced the quantum of alimony, reflecting equity-based reasoning. Likewise, in Parveen Kumar Jain v. Anju Jain (2025), the Supreme Court imposed a one-time settlement of several crores, stressing full income disclosure and fair rehabilitation of the wife. Bar and Bench

There is a shift towards a gender-neutral and a need-based approach while granting maintenance or alimony, as quantum is not just about numbers, but it is also about fairness, balance and survival. Bar and Bench This shift in the Indian jurisprudence toward a needs-based approach that considers the totality of the dependent spouse's circumstances, including her economic losses from the marriage and her capacity for economic rehabilitation, represents a significant evolution from the earlier approach that focused primarily on the husband's ability to pay.

The Indian Supreme Court's 2025 decision reported as 2025 INSC 197, which addressed the scope of permanent alimony under Section 25 of the Hindu Marriage Act, clarified that the right to claim permanent alimony under that provision survives even in cases where the marriage is declared void or voidable, provided that specific equitable conditions are met. The right under Section 25 is different from the right to maintenance under the Hindu Adoptions and Maintenance Act. The right is created in favour of both spouses once there is a decree passed under Sections 9 to 13 of the 1955 Act. SCI This clarification of the scope of the alimony right is relevant to the Bangladesh analysis because it illustrates the way in which a well-designed statutory framework can be developed through judicial interpretation to cover situations that the statute itself does not explicitly address.

6.3 The Gender-Neutral Dimension of Indian Maintenance Law

One of the significant features of the Indian maintenance jurisprudence of 2024 and 2025 is the increasing recognition of the gender-neutral character of maintenance obligations. The concept of maintenance is broader than alimony and is not confined to post-divorce support. It includes the legal right of a wife to claim maintenance during the subsistence of marriage and even after judicial separation. Section 18 of the Hindu Adoption and Maintenance Act, 1956, entitles a Hindu wife to be maintained by her husband during her lifetime. Further, Section 144 of the BNSS transcends religious boundaries and entitles a wife, including a divorced wife who is unable to maintain herself, to seek maintenance from her husband. Bar and Bench

The gender-neutral development in Indian maintenance jurisprudence is most visible in the recognition of the husband's right to claim maintenance from a financially stronger wife, recognized in cases like Rani Sethi versus Sunil Sethi, and in the consideration of both parties' financial positions and earning capacities in the calculation of maintenance awards. This development reflects the broader social reality that the traditional assumption that husbands are economically stronger than wives is no longer universally valid, and that a maintenance framework that operates only in one direction is inconsistent with the constitutional principle of equality.

For Bangladesh, the gender-neutral development in Indian maintenance jurisprudence provides a model for the development of a reformed maintenance framework that treats both spouses as potentially either payers or recipients of maintenance, depending on their relative financial positions. This approach is more consistent with the constitutional principle of equality than the current framework in which maintenance is exclusively a male obligation, and it would address the specific situations, which are not uncommon in educated Hindu families in Bangladesh, in which the wife has greater earning capacity than the husband.

6.4 The Nepal Comparative Perspective

Nepal's National Civil Code of 2017, which replaced the previous Muluki Ain and established a largely unified framework for family law across religious communities, provides a further comparative reference for the reform of Hindu maintenance law in Bangladesh. The Nepal Code's provisions on maintenance are significantly more comprehensive and more protective than the Bangladeshi framework, and they have been developed through the legislative process in ways that reflect both the Hindu philosophical tradition and contemporary human rights standards.

The Nepal Civil Code's maintenance provisions establish a right to maintenance for spouses, children, and parents that is not conditioned on any demonstration of the claimant's moral character or sexual conduct. The unchastity conditions that disfigure both the Indian and the Bangladeshi Hindu maintenance frameworks are absent from the Nepali code: a spouse seeking maintenance need not demonstrate her chastity. The Nepal Code also establishes a comprehensive framework for child maintenance that covers both legitimate and illegitimate children and that treats the best interests of the child as the paramount consideration.

The Nepal Civil Code's treatment of divorce and its financial consequences is also more progressive than the Bangladeshi approach. The Code permits divorce on a range of grounds including mutual consent, separation, incompatibility, and several specific grounds of conduct. When divorce is granted, the Code provides for a comprehensive financial settlement that includes maintenance, property division, and the restitution of gifts. This comprehensive approach to the financial consequences of marriage dissolution provides a framework for fair and predictable maintenance determinations that the Bangladeshi system entirely lacks.

CHAPTER SEVEN: THE INTERNATIONAL LAW FRAMEWORK AND ITS IMPLICATIONS FOR MAINTENANCE REFORM

7.1 CEDAW and the Right to Maintenance

The Convention on the Elimination of All Forms of Discrimination Against Women, ratified by Bangladesh in 1984, contains provisions directly relevant to the maintenance framework for Hindu women. Article 16(1)(c) of CEDAW requires states parties to ensure the same rights and responsibilities during marriage and at its dissolution. The application of this provision to the

maintenance framework is clear: if the law provides significantly different rights to men and women with respect to maintenance during marriage and at separation, it violates CEDAW's requirement of equal rights during marriage.

Bangladesh's reservation to Article 16(1)(c), grounded in its stated conflict with Sharia law, does not apply to Hindu women and therefore provides no justification for the discriminatory features of the Hindu maintenance framework. The CEDAW Committee has repeatedly called on Bangladesh to remove its discriminatory personal law provisions for women of all religious communities, including Hindu women, and has specifically noted the inadequacy of the Hindu maintenance framework.

CEDAW Article 16(1)(h) requires states parties to ensure the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration. This provision, read alongside the property and inheritance framework analyzed in Parts Two and Three of this treatise, supports the argument that the denial of property rights to Hindu women in Bangladesh is a CEDAW violation that strengthens rather than diminishes the case for comprehensive reform of both the inheritance and the maintenance framework.

The CEDAW Committee's General Recommendation No. 29 on Article 16 of CEDAW, adopted in 2013, addresses specifically the economic consequences of marriage, providing detailed guidance on the obligations of states parties to ensure equitable economic treatment of women in the context of marriage, separation, and the dissolution of marriage. The General Recommendation calls on states parties to ensure that maintenance law does not perpetuate gender-based economic vulnerability by conditioning maintenance rights on conduct requirements that apply only to women.

7.2 The Right to an Adequate Standard of Living

The International Covenant on Economic, Social and Cultural Rights, which Bangladesh ratified in 1998, contains in Article 11 the right of everyone to an adequate standard of living, including adequate food, clothing, and housing, and to the continuous improvement of living conditions. This provision, read in conjunction with the principle of non-discrimination established in Article 2(2) of the Covenant, creates an international law obligation to ensure that the maintenance framework provides Hindu women and other dependent persons with effective access to an adequate standard of living.

The Committee on Economic, Social and Cultural Rights, in its General Comment No. 20 on non-discrimination in economic, social and cultural rights, has emphasized that the prohibition of discrimination in the enjoyment of economic and social rights extends to discrimination on grounds including sex and religion, and that states parties are required to take specific positive measures to address the economic vulnerability created by discriminatory personal law systems.

The application of these international standards to the Hindu maintenance framework in Bangladesh is direct and unambiguous. The existing framework fails to provide Hindu women

with an effective right to an adequate standard of living in the event of marital breakdown or abandonment, and this failure constitutes a violation of Bangladesh's obligations under the International Covenant on Economic, Social and Cultural Rights.

7.3 The Beijing Platform for Action and Its Relevance

The Beijing Platform for Action, adopted at the Fourth World Conference on Women in 1995 and periodically reviewed and reaffirmed by the UN Commission on the Status of Women, contains specific strategic objectives relating to women's economic rights and independence that are directly relevant to the reform of Hindu maintenance law in Bangladesh. Strategic Objective A.2 of the Platform calls on governments to revise laws and administrative practices to ensure women's equal rights and access to economic resources, including through the reform of personal and family laws that deny women economic independence.

Bangladesh participated in the Beijing Conference and endorsed the Platform for Action, committing itself to the implementation of its strategic objectives. The UN Commission on the Status of Women's Beijing+30 review process, underway in 2025, has highlighted the continued failure of many states to implement the economic rights provisions of the Platform for Action and has called for renewed commitment to legislative reform.

The reform of Hindu maintenance law in Bangladesh is directly relevant to Bangladesh's Beijing+30 commitments. The existence of a maintenance framework that conditions women's economic rights on their moral conduct, that does not cover widows, children, and parents adequately, and that provides no effective enforcement mechanisms is inconsistent with the commitments Bangladesh made at Beijing and has reaffirmed in subsequent reviews.

CHAPTER EIGHT: JURISPRUDENTIAL AND PHILOSOPHICAL ANALYSIS OF THE MAINTENANCE FRAMEWORK

8.1 Maintenance and the Theory of Reliance and Expectation

The jurisprudential foundations of the maintenance obligation can be analyzed through the framework of reliance and expectation theory, which has been developed in the contract law context but has broader applications to the law of domestic obligations. The theory of reliance posits that when one person relies on a commitment or relationship in ways that alter their position and create vulnerability, they acquire a claim on the other party to provide protection against the losses created by that reliance. The theory of expectation posits that promises and commitments create legitimate expectations on which people base their decisions, and that the frustration of those expectations without adequate remedy is a form of wrong.

Applied to the Hindu maintenance context, the reliance theory supports a strong maintenance obligation for the following reason. When a Hindu woman marries, she typically makes a set of life decisions that are based on the expectation that the marriage will provide her with economic

security: she may forgo educational and employment opportunities, she may invest years of her labor in managing the household and raising children, she may sacrifice personal ambitions and economic independence in the service of the family. These decisions create a deep reliance on the continuation of the marriage and on the husband's fulfillment of his obligation to provide maintenance.

When the marriage breaks down, or when the husband abandons or mistreats his wife, the reliance that the wife has placed on the marriage is frustrated in the most severe way possible. She finds herself without the educational qualifications and employment experience that she would have had if she had not married, without the economic independence she might have built over a working life, and without the property rights that would give her a claim on the family assets. The maintenance obligation is the legal recognition of this reliance interest: it is the law's acknowledgment that the wife has, through her years of domestic labor and personal sacrifice, earned a claim on the husband's resources that does not evaporate simply because the relationship has broken down.

This reliance-based analysis of the maintenance obligation has significant implications for the specific features of the existing law in Bangladesh. The unchastity condition that makes the wife's maintenance right contingent on her sexual fidelity is inconsistent with the reliance analysis, because the wife's reliance interest in the marriage does not depend on her sexual conduct. She has invested years of labor and personal sacrifice regardless of her sexual conduct, and the law's conditioning of her maintenance right on that conduct does not reflect the actual nature of the claim she has earned through her reliance. Similarly, the narrow grounds specified in the 1946 Act are inconsistent with the reliance analysis, because the wife's reliance interest in the marriage is not limited to cases in which the husband is guilty of specific specified forms of misconduct; it arises from the totality of her dependence on the marriage throughout its duration.

8.2 The Feminist Economic Analysis of Maintenance

The feminist economic analysis of maintenance law, developed by scholars including Martha Fineman, Joan Williams, and Alison Diduck, provides a complementary framework for understanding the inadequacies of the existing Hindu maintenance law in Bangladesh and for designing a more adequate alternative.

Fineman's influential work on the autonomy myth challenges the assumption that individuals are economically self-sufficient agents whose need for support represents a failure of personal responsibility rather than a social condition requiring legal remedy. She argues that dependency is a universal human condition, not a characteristic of weak or irresponsible individuals, and that the social arrangements through which dependency is managed, including the unpaid domestic labor of women in households, represent a fundamental contribution to social well-being that the law should recognize and support. Applied to the Hindu maintenance context, Fineman's analysis supports a maintenance framework that treats the wife's economic vulnerability at marital breakdown as a social and structural condition for which the husband and the legal system share responsibility, rather than as a personal failing that the wife must overcome on her own.

Joan Williams's work on the unencumbered ideal worker develops a related analysis of the economic consequences of women's domestic roles. Williams argues that the ideal worker of the modern market economy is implicitly modeled on a person without domestic responsibilities, a person whose time and attention are available to the employer without interruption by childcare, eldercare, or household management. Women who take on the domestic roles that enable their husbands to approximate this ideal worker norm sacrifice their own market incomes and career advancement in the service of their families, and the maintenance law should recognize and compensate this sacrifice when the marriage ends.

The relevance of this feminist economic analysis to the Hindu maintenance framework in Bangladesh is direct and specific. A Hindu woman in Bangladesh who has spent twenty years managing a household, raising children, and performing the domestic labor that enabled her husband to pursue his career is not simply a person who happens to have no independent income; she is a person who has made a specific economic contribution to the family unit that has been systematically undervalued by a legal system that treats only market labor as worthy of legal protection. A reformed maintenance framework that recognized the economic value of domestic labor and incorporated it into the calculation of maintenance awards would be both more just and more consistent with the constitutional principle of equality.

8.3 The Hindu Philosophical Tradition on Economic Security and Human Dignity

The Hindu philosophical tradition itself provides resources for a more adequate understanding of the moral foundations of the maintenance obligation. The concept of Artha, one of the four Purusharthas or aims of human life recognized by the Hindu tradition, acknowledges that economic well-being is a genuine component of human flourishing, not a lesser concern than the spiritual aims of Dharma and Moksha. The Arthashastra tradition, associated with the ancient political philosopher Kautilya, developed a sophisticated analysis of economic relations and obligations that recognized the importance of economic security as a precondition for the good life.

The Dharmasastra tradition's specific provisions on maintenance, as analyzed in Chapter One of this part, reflect this recognition: the obligation to maintain dependent family members is not treated as a mere legal technicality but as an expression of the fundamental moral commitment to care for those in one's charge. The husband's obligation to maintain his wife is treated as one of the essential duties of the married man, grounded in the sacred character of the marriage bond and in the ethical framework of Dharma.

The gap between this Dharmasastra vision of maintenance as a moral obligation and the practical operation of the maintenance framework in Bangladesh today is not an inevitable consequence of the tradition's philosophical commitments but a product of specific historical choices, including the colonial systematization of certain interpretations over others, the post-independence failure to legislate reform, and the persistent privileging of the interests of the propertied class over the economic needs of the most vulnerable members of the Hindu community.

Reform advocates can and should invoke this internal tradition to argue that a reformed maintenance framework that provides Hindu women with effective economic protection is not a departure from the Hindu tradition but a recovery of its best and most genuinely Dharmic commitments. The tradition's own philosophical framework demands that the law provide effective support for those who depend on others for their economic well-being, and a maintenance framework that fails to do this is failing the tradition's own standards, not merely the standards of contemporary human rights law.

8.4 The Liberal Theory of Equal Concern and Respect

Ronald Dworkin's foundational principle of liberal political philosophy, the principle that the government must treat each person as an equal, meaning that it must govern with equal concern and respect for the interests and dignity of every person, provides a further philosophical framework for evaluating the Hindu maintenance law in Bangladesh.

Applied to the maintenance framework, the principle of equal concern and respect requires that the law give equal weight to the maintenance needs of Hindu women as to the property rights of Hindu men. A legal system that provides extensive protection for the property rights of Hindu men, through the rules of inheritance, the joint family system, and the general law of property, while providing only minimal and heavily conditioned protection for the maintenance needs of Hindu women, is not treating those women with equal concern and respect. It is treating their economic needs as less important than the economic interests of men, and it is doing so not through any principled philosophical justification but through the accumulated inertia of a legal tradition that has never been subjected to the kind of critical scrutiny that the principle of equal concern and respect demands.

Dworkin's principle also has implications for the conditionality of the maintenance right. The unchastity condition that makes the wife's maintenance right contingent on her sexual fidelity treats the wife's sexuality as a condition of her equal membership in the legal community, which is inconsistent with the principle of equal concern and respect. No equivalent condition applies to men: a husband who is unfaithful to his wife does not thereby forfeit any legal rights. The asymmetrical conditionality of the maintenance right is therefore not merely discriminatory in the technical sense but reflective of a failure to treat women with the equal concern and respect that a just legal system owes to all persons regardless of their gender.

CHAPTER NINE: THE FAMILY COURTS ACT, 2023, AND ITS IMPLICATIONS FOR HINDU MAINTENANCE

9.1 The Architecture of the Family Courts Act, 2023

The Family Courts Act of 2023, which supersedes the Family Courts Ordinance of 1985, establishes the institutional framework for the resolution of family law disputes in Bangladesh across all religious communities. The Act creates Family Courts at the district level with

jurisdiction over five categories of family matters: dissolution of marriage, restitution of conjugal rights, dower, maintenance, and the guardianship and custody of children.

For Hindu parties, the Family Court's jurisdiction over maintenance is exercised by applying the Hindu personal law of maintenance, primarily the 1946 Act and the relevant case law. The Family Courts Act does not itself create new substantive maintenance rights for Hindus; it establishes the procedural and institutional framework within which the existing substantive law is applied. But the institutional features of the Family Courts Act have significant practical implications for the accessibility and effectiveness of Hindu maintenance law.

The Act requires that Family Courts be established at the district level, making them more geographically accessible than the High Court proceedings that were previously the primary forum for some categories of family law claims. The Act establishes procedural rules designed to expedite family law proceedings, including mandatory mediation before substantive hearing, time limits for the completion of proceedings, and simplified evidentiary procedures. And the Act establishes a legal aid framework that, in principle, provides access to legal representation for persons who cannot afford to retain a lawyer.

These procedural features are significant for Hindu maintenance claimants, who have historically faced serious practical barriers to accessing the courts. The geographic accessibility of district-level Family Courts reduces but does not eliminate the access barriers for women in rural areas. The mediation requirement introduces an alternative to litigation that may be more accessible for women without legal representation, though it also carries the risk of producing settlements that are unfavorable to the weaker party if the mediation process is not conducted with adequate attention to the power imbalance between the parties.

9.2 The Interaction of the Family Courts Act with the 1946 Maintenance Statute

The procedural framework of the Family Courts Act interacts with the substantive framework of the 1946 Act in ways that require careful analysis. The most significant interaction concerns the jurisdiction of the Family Court to grant maintenance to Hindu wives who have not formally separated from their husbands but are seeking maintenance because the husband has failed to provide adequate support within the marriage.

The question of whether the Family Court has jurisdiction to order maintenance for a Hindu wife who is still living in the marital home but is not receiving adequate support from her husband is not clearly resolved by either the Family Courts Act or the 1946 Act. The 1946 Act is concerned specifically with the wife's right to separate residence and maintenance; it addresses the situation in which the wife has left or been compelled to leave the marital home, not the situation in which she remains in the home but is not being adequately maintained. The general provisions of the Code of Criminal Procedure, now replaced by the Bharatiya Nagarik Suraksha Sanhita framework in India but still operative in their original form in Bangladesh through Section 488 and its successors, provided some basis for ordering maintenance to wives who had not separated from their husbands, but the interaction of this general provision with the specific Hindu personal law framework has never been clearly worked out.

A reformed Hindu maintenance statute should explicitly address this gap by providing that a Hindu wife is entitled to maintenance from her husband at all times during the marriage, not only during periods of justified separation. This would bring the Hindu maintenance framework into conformity with the general principle of the Muslim personal law framework, which provides for maintenance of the wife from the inception of the marriage without requiring any demonstration of the wife's separation or the husband's specific misconduct.

9.3 Enforcement Mechanisms and Their Adequacy

The enforcement of Family Court maintenance orders is one of the most practically significant and most inadequately addressed aspects of the current legal framework. Even when a Hindu wife successfully obtains a maintenance order from the Family Court, the enforcement of that order against a recalcitrant or absent husband presents serious difficulties that the existing law does not adequately resolve.

The primary enforcement mechanism available under the Family Courts Act is an application to the court for enforcement of the maintenance order, which can result in attachment of the husband's assets or, as a last resort, his imprisonment for contempt of court. But these enforcement mechanisms depend on the court being able to identify and locate the husband and his assets, which is frequently not possible in the case of deserting husbands who have moved across the India-Bangladesh border or who have transferred their assets to avoid attachment.

The absence of any mechanism for the automatic withholding of maintenance from the husband's salary or wages, similar to the income withholding orders available in many other jurisdictions, means that each instance of non-payment requires a new enforcement application. This places a continuous burden on the maintenance creditor and provides the debtor with the ability to frustrate the order through serial non-compliance.

A reformed maintenance framework should include automatic income withholding mechanisms, expedited enforcement procedures, penalties for serial non-compliance that are severe enough to deter non-payment, and international enforcement cooperation mechanisms for cases in which the maintenance debtor has left Bangladesh. These enforcement mechanisms are as important as the substantive right to maintenance: a right without an effective enforcement mechanism is, in practice, no right at all.

CHAPTER TEN: REFORM PROPOSALS: THE PROPOSED HINDU MAINTENANCE AND ECONOMIC SECURITY ACT

10.1 The Legislative Model: Drawing on India and Nepal

The reform of Hindu maintenance law in Bangladesh requires comprehensive legislative action. The existing framework, which consists of a limited 1946 statute supplemented by uncodified case law and the general provisions of the Code of Criminal Procedure and the Family Courts

Act, is inadequate in substance, in procedure, and in enforcement. What is needed is a comprehensive Hindu Maintenance and Economic Security Act that addresses all aspects of the maintenance obligation within the Hindu community in Bangladesh, including the maintenance of wives during marriage and separation, the maintenance of widows, the maintenance of children, the maintenance of parents, the quantum of maintenance and the method of its calculation, and the enforcement of maintenance obligations.

The Indian Hindu Adoptions and Maintenance Act of 1956, as developed through sixty years of judicial interpretation including the landmark decisions of 2024 and 2025 analyzed earlier in this part, provides the most directly relevant model. But the Bangladesh statute should go beyond the Indian model in several respects, incorporating the lessons of the Indian experience and the developments in comparative and international law that have occurred since the Indian Act was enacted.

The Nepal Civil Code of 2017 provides a model for a more integrated and more progressive maintenance framework that treats maintenance as a component of the comprehensive financial settlement that should accompany the dissolution of a marriage, rather than as a separate and secondary issue. The Nepal approach, which acknowledges divorce and treats the financial consequences of divorce as a package to be determined comprehensively at the time of dissolution, is more consistent with the contemporary understanding of marriage as an economic partnership than the approach of the 1946 Act, which treats maintenance as a consequence of separation within an ongoing marriage.

10.2 Core Provisions of the Proposed Act

The proposed Hindu Maintenance and Economic Security Act for Bangladesh should be organized around the following core provisions.

Part One of the proposed Act, preliminary, should define the key concepts including maintenance, dependent person, separate residence, and marriage, and should affirm the constitutional principles of equality and non-discrimination that the Act implements. It should provide that the Act applies to all persons governed by the Hindu personal law of Bangladesh, and that the provisions of the Act shall be interpreted consistently with the constitutional guarantee of equality and the international human rights obligations of Bangladesh.

Part Two of the proposed Act, maintenance of the wife, should establish a clear and comprehensive right to maintenance for the Hindu wife during the marriage and in the event of separation or abandonment. The right should not be conditioned on the wife's sexual conduct or religious identity: the provisions equivalent to Section 3 of the 1946 Act, which deny maintenance to unchaste wives and to wives who have converted from Hinduism, should be eliminated. The grounds on which the wife is entitled to separate residence and maintenance should be expanded to include any situation in which continued cohabitation with the husband is unreasonable, unsafe, or practically impossible, including situations of economic abandonment in which the husband has simply failed to provide adequate support without any specific misconduct that falls within the enumerated grounds.

Part Three of the proposed Act, maintenance of widows, should establish a clear statutory right to maintenance for Hindu widows from the estate of their deceased husbands. The right should not be conditioned on the widow's sexual conduct. The widow's right to maintenance should be calculated by reference to the value of the estate and the widow's reasonable needs, and the calculation should be made by the Family Court on the basis of evidence about both factors. The widow's maintenance right should be enforceable against the persons who succeed to the estate after the husband's death, and those persons should be required to provide the widow with her maintenance before any distribution of the estate among themselves.

Part Four of the proposed Act, maintenance of children, should establish comprehensive maintenance rights for both minor and adult dependent children. The right of minor children to maintenance from both parents should be absolute, not subject to any conduct-based conditions. The right of adult children with disabilities to maintenance should be recognized and the conditions for its exercise should be clearly specified. The right of daughters to maintenance from the estate when the estate has been inherited by brothers should be clearly recognized and its enforcement should be provided for.

Part Five of the proposed Act, maintenance of parents, should affirm and supplement the provisions of the Maintenance of Parents Act of 2013 as they apply within the Hindu community. It should provide specifically that both sons and daughters are equally obligated to maintain their aged parents, reflecting the principle of gender equality in family obligations that corresponds to the principle of gender equality in inheritance rights.

Part Six of the proposed Act, quantum of maintenance, should provide specific legislative guidance on the factors to be considered in determining the quantum of maintenance, drawing on the Indian Supreme Court's guidelines in Rajnesh versus Neha and the subsequent developments in the Parvin Kumar Jain and Shakti versus Anita decisions of 2024 and 2025. The relevant factors should include the financial positions of both parties, the standard of living during the marriage, the dependent party's reasonable needs, the contributions of the dependent party to the family including unpaid domestic labor and care work, the employment and educational sacrifices made by the dependent party during the marriage, and the dependent party's realistic prospects for achieving economic independence.

Part Seven of the proposed Act, enforcement, should establish comprehensive enforcement mechanisms for maintenance orders, including income withholding mechanisms, asset attachment procedures, penalties for serial non-compliance, and international enforcement cooperation provisions. The Act should also provide for the periodic review and adjustment of maintenance orders to reflect changes in the financial positions of the parties and in the cost of living.

Part Eight of the proposed Act, legal aid, should provide that persons seeking maintenance under the Act who cannot afford legal representation shall be entitled to legal aid, and that the state shall provide funding for legal aid in Family Court proceedings under the Act. This provision should be supplemented by a requirement that the Family Court appoint a legal aid representative

for any party who appears without legal representation in a maintenance proceeding, in recognition of the power imbalance that typically characterizes such proceedings.

10.3 The Relationship Between Maintenance Reform and Inheritance Reform

The proposed Hindu Maintenance and Economic Security Act is not a substitute for the inheritance reform advocated in Part Three of this treatise, and the two reform agendas must be understood as complementary rather than alternative approaches to the same underlying problem. Inheritance reform, by giving Hindu women full ownership rights over their shares of family property, would reduce the structural dependence on maintenance that characterizes the current situation. Maintenance reform, by providing effective protection for economically dependent persons in the interim, would reduce the practical hardship created by the current framework during the period before inheritance reform can take effect.

The two reforms should therefore be pursued simultaneously, as components of a comprehensive reform package for Hindu personal law in Bangladesh. The comprehensive Hindu Personal Law Code proposed in earlier parts of this treatise, or alternatively a series of coordinated legislative reforms addressing specific domains, should include provisions on both inheritance and maintenance as integrated components of a coherent approach to the economic position of Hindu women in Bangladesh.

CHAPTER ELEVEN: THE MAINTENANCE LAW JURISPRUDENCE OF BANGLADESHI COURTS: AN ANALYSIS OF KEY DECISIONS

11.1 The Gopal Chandra Decision Revisited

The Appellate Division's decision in Gopal Chandra versus Mitali Rani Chandra of 2010 has been referenced several times in this and preceding parts of the treatise, but its significance for the maintenance law analysis deserves a more extended and specific examination. The decision's holding that Hindu marriage is sacred and indissoluble and that no decree of dissolution can be granted to Hindu parties is the most direct judicial statement of the legal framework that shapes the entire maintenance analysis.

The significance of this holding for maintenance law operates at two levels. At the first and most direct level, it confirms that the maintenance framework must be designed for a system in which the marriage bond is never legally dissolved but only suspended through orders for separate residence. This means that the maintenance recipient is always a person who is still legally married to the maintenance payer, and that the maintenance obligation therefore coexists with the continuing legal relationship of marriage. The legal consequences of this coexistence are significant: the maintenance payer cannot remarry, the maintenance recipient cannot remarry, and neither party can achieve the clean legal break that divorce would provide.

At the second and more profound level, the Gopal Chandra decision reflects a jurisprudential commitment to the religious character of the Hindu marriage bond that has consequences beyond the specific question of divorce. If the Hindu marriage is truly sacred and indissoluble in a religiously normative sense, then the courts may be tempted to interpret the maintenance framework in ways that subordinate the practical economic needs of the dependent wife to the normative requirements of the marriage ideal: a wife who has failed to meet the standards of the ideal Hindu wife may find her maintenance claim weakened by the courts' assessment of her failure.

This jurisprudential tendency must be resisted in the development of a reformed maintenance framework. The sanctity of the Hindu marriage bond, however sincerely held as a theological commitment, cannot be a reason for denying economically dependent women the legal protection they need and are owed. The constitutional principle of equality, the international human rights obligations of Bangladesh, and the most fundamental principles of justice all require that the maintenance framework provide effective protection for economically dependent persons regardless of the theological framework within which their marriage is understood.

11.2 The Civil Revision No. 1539 of 2021: Recent High Court Developments

The civil revision proceedings numbered 1539 of 2021 before the High Court Division of the Bangladesh Supreme Court, referenced in the October 2025 journal article on the development of maintenance of Hindu married women, represent one of the more recent Bangladeshi judicial engagements with the Hindu maintenance framework. The decision in this revision, delivered in December 2024 as reported in the article, addressed specific aspects of the application of the 1946 Act to a contemporary maintenance dispute and provides evidence of the current state of the judicial interpretation of the Hindu maintenance law.

The specific issues addressed in the December 2024 decision include the quantum of maintenance appropriate in the circumstances of the parties, the relevance of the wife's educational qualifications and earning capacity to the assessment of her maintenance needs, and the procedural requirements for establishing the grounds for separate residence under the 1946 Act. While the full text of the decision is not available for detailed analysis in this treatise, the reference to it in the 2025 academic literature suggests that the courts are continuing to develop the Hindu maintenance jurisprudence in ways that reflect both the traditional framework and the contemporary constitutional and international law context.

The development of the maintenance quantum assessment toward a more comprehensive consideration of the parties' circumstances, including the wife's educational qualifications and earning capacity, reflects the influence of the Indian Supreme Court's developing jurisprudence on maintenance assessment. The trend in both jurisdictions toward a more individualized and contextual assessment of maintenance needs is a positive development, even in the absence of the legislative reform that would provide a more systematic framework.

11.3 The Role of the Family Court in Hindu Maintenance Cases

The practical operation of the Family Court system in Hindu maintenance cases reveals a set of challenges that both illuminate the inadequacies of the existing law and suggest the specific reforms needed in the procedural framework.

Hindu women seeking maintenance through the Family Court face a distinctive set of practical barriers that compound the substantive inadequacies of the law. The Family Court is located in the district headquarters, which may be a significant distance from the rural areas where many Hindu families live. The proceedings require multiple court appearances, creating time and cost burdens that are prohibitive for women without independent income. The legal representation that is theoretically available through the legal aid system is in practice inadequate, with too few legal aid lawyers, insufficient funding, and inadequate training in the specific complexities of Hindu personal law.

The mediation requirement introduced by the Family Courts Act of 2023 has the potential to provide a more accessible and less adversarial route to maintenance settlements, but its implementation in the Hindu community context raises specific concerns. Mediation requires the parties to negotiate in good faith, but the power imbalance between a Hindu wife seeking maintenance and a husband who controls the family assets is not conducive to good-faith negotiation unless the mediator is specifically trained to address power imbalances and to ensure that the weaker party's interests are protected. The absence of such specialized training in most of the Family Court mediator capacity in Bangladesh means that the mediation process may systematically produce settlements that are less favorable to the wife than a contested court proceeding would provide.

CHAPTER TWELVE: THE POLITICS OF MAINTENANCE REFORM: COMMUNITY, CONSENT, AND THE LEGISLATIVE PROCESS

12.1 The Conservative Opposition and Its Arguments

The opposition to maintenance reform within the Hindu community in Bangladesh, like the opposition to inheritance reform analyzed in earlier parts of this treatise, combines theological arguments, pragmatic arguments, and arguments rooted in political identity that must be carefully analyzed rather than simply dismissed.

The theological argument against removing the unchastity condition from the maintenance framework typically takes the form of citing the Dharmasastra provisions that condition the wife's maintenance right on her fulfillment of her marital duties. The argument is that the maintenance obligation is mutual: the husband owes maintenance to the wife who fulfills her role as a faithful Hindu wife, and the obligation lapses when the wife fails to fulfill her role. Removing the unchastity condition, on this view, would undermine the reciprocal character of

the marriage relationship and would effectively impose a maintenance obligation on the husband without any corresponding obligation on the wife.

This argument has theological standing in the tradition but is morally and legally untenable as a guide to contemporary law. The reciprocal obligations of marriage, in the Hindu tradition as in all traditions, cannot be reduced to a simple exchange in which the wife's sexual fidelity is the consideration for the husband's economic support. The marriage relationship involves a complex web of mutual obligations, contributions, and dependencies that cannot be neatly balanced in terms of sexual conduct and monetary support. A wife who has been unfaithful has violated one of the obligations of the marriage relationship, but this violation does not extinguish her claim on the maintenance that reflects her economic contribution to the family and her reliance on the marriage for her economic security.

The pragmatic argument against maintenance reform typically focuses on the concern that expanding maintenance rights for Hindu women will increase the financial burdens on Hindu men at a time when the Hindu community is already economically vulnerable because of discrimination, displacement, and communal violence. This argument has a degree of political credibility within the community, because it connects the question of individual financial obligations to the collective economic situation of a minority community that has legitimate grievances about the structural disadvantages it faces. But it cannot justify the maintenance of a legal framework that systematically disadvantages the most vulnerable members of the community; the economic difficulties of Hindu men do not create a right to place the cost of those difficulties on their wives and children.

12.2 The Progressive Coalition for Maintenance Reform

The advocates for maintenance reform within the Hindu community and in the broader Bangladeshi civil society represent a more diverse and more practically influential coalition than is sometimes recognized. The women's organizations that have been most active in advocating for Hindu personal law reform, including Ain o Shalish Kendra, Mahila Parishad, and Manusher Jonno Foundation, have placed maintenance reform alongside inheritance reform and marriage law reform as components of a comprehensive agenda for improving the legal position of Hindu women in Bangladesh.

The academic community, including the growing body of scholarship on Hindu personal law in Bangladesh at institutions like BRAC University and the University of Dhaka, has generated significant new analysis of the maintenance framework and its inadequacies. The BRAC Institute of Governance and Development's October 2025 Working Paper on "Protecting Women's Family Rights in a Minority Community: Hindu Family Law Reform in Bangladesh," by Sultan, Roy Nath, Rabbi, and Islam, represents the most recent systematic academic analysis of the reform agenda and provides evidence of the growing scholarly consensus on the need for comprehensive reform.

The legal profession, including the significant number of lawyers at the Supreme Court of Bangladesh who are Hindu and who have direct experience of the inadequacies of the

maintenance framework, provides an important source of practical advocacy. The article published in Lawyers Club Bangladesh in March 2025, titled "Harmonizing Hindu Personal Laws with Constitutional Principles: A Call for Reform," is one of several recent contributions by practicing lawyers that have called for specific legislative action on the maintenance framework.

12.3 The Interim Government and the Window for Reform

The political situation in Bangladesh in 2025 and 2026, following the August 2024 political transition, presents a specific and limited window for legislative reform of the Hindu maintenance framework. The interim government under Muhammad Yunus has positioned itself as a reform government, and several members of the government have expressed openness to the reform of personal law systems that are inconsistent with constitutional principles.

The Law Commission of Bangladesh, which is the principal institutional mechanism for developing legislative reform proposals, has not yet undertaken a specific review of the Hindu maintenance framework. Engaging the Law Commission to undertake such a review, with a mandate to recommend comprehensive legislative reforms of the kind outlined in this part, would be a strategic priority for reform advocates. A Law Commission review would generate authoritative recommendations, would provide a structured forum for community consultation, and would create a legislative agenda that the government would be in a position to act on.

The timing is significant. The interim government will eventually be succeeded by an elected government, and the political calculations of an elected government on questions of Hindu personal law reform are typically more conservative than those of an unelected interim administration. The window for reform that the current political moment presents may not remain open indefinitely, and reform advocates should use it strategically to advance as much of the comprehensive reform agenda as is politically feasible.

CONCLUSION TO PART EIGHT

The law of Hindu maintenance in Bangladesh is not merely legally inadequate; it is morally indefensible. It systematically fails to provide the most economically vulnerable members of the Hindu community, wives, widows, children, and aged parents, with the legal protection they need and are owed. It does so through a combination of inadequate substantive rights, conditions and limitations that are constitutionally problematic, procedural barriers that prevent the exercise of even the limited rights that the law notionally recognizes, and enforcement mechanisms that are too weak to give those rights practical effect.

This failure of the maintenance law is not an isolated problem; it is part of a larger pattern of legal stagnation that this treatise has documented across eight parts. The denial of inheritance rights, the absence of marriage law reform, the lack of a divorce framework, the inadequacy of the protection for Hindu religious institutions, the legal embedding of caste discrimination, and

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now the maintenance framework's systematic failure to protect economically dependent persons: these are all aspects of a single, comprehensive failure of the Bangladesh legal system to fulfill its constitutional obligations to thirteen million of its citizens.

The remedy for this failure requires comprehensive legislative action. The proposed Hindu Maintenance and Economic Security Act outlined in Chapter Ten of this part represents the core of what is needed in the specific domain of maintenance law. But that Act should be understood as a component of the comprehensive Hindu personal law reform code that this treatise has been advocating across its entire length. The maintenance framework cannot be adequately reformed in isolation from the inheritance framework, the marriage framework, and the institutional support frameworks that together constitute the legal environment in which Hindu families in Bangladesh live their lives.

The philosophical foundations for this comprehensive reform are secure. They are grounded in the constitutional principles of equality and non-discrimination, in the international human rights obligations that Bangladesh has freely accepted, in the growing body of comparative law from India, Nepal, and other jurisdictions, and in the best philosophical traditions of Hinduism itself, which affirm the equal worth and dignity of all persons regardless of gender or caste and recognize the fundamental moral obligation to care for those who depend on others for their well-being.

What remains is the political will to act. This treatise has been devoted to providing the intellectual architecture for reform, in the conviction that the detailed legal and philosophical analysis of the problem is a necessary precondition for the practical work of building the political will to address it. The analysis in this part, and across the eight parts of this treatise to date, demonstrates that the case for comprehensive reform of Hindu personal law in Bangladesh is overwhelming. The law must change. Justice demands it. The constitution requires it. And the thirteen million citizens of Bangladesh who are governed by a legal system that has failed them for too long deserve no less.

BIBLIOGRAPHY AND FURTHER READING FOR PART EIGHT

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2010 23-26, is the most authoritative post-independence Bangladeshi authority on the indissolubility of Hindu marriage and its implications for the maintenance framework.

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On the international law framework, the CEDAW Committee's General Recommendation No. 29 on the economic consequences of marriage, family relations, and their dissolution, adopted in 2013, is the foundational international authority. The Committee's General Recommendation No. 39 on the rights of indigenous women and girls, adopted in 2022, provides specific guidance on the intersectional discrimination faced by women from marginalized communities including Dalit women.

Part Nine of this treatise will examine the Hindu law of guardianship and custody of children in Bangladesh: the classical Dharmasastra provisions on the rights and duties of guardians, the colonial transformation of those provisions into the Guardian and Wards Act framework, the specific rules governing the guardianship of Hindu children under the Dayabhaga school, the best interests of the child principle and its application in Hindu guardianship cases in Bangladesh, the constitutional and international law framework for children's rights including the UN Convention on the Rights of the Child, the specific issues arising from the intersection of guardianship law with the absence of divorce in Hindu law in Bangladesh, the treatment of custodial disputes in situations of communal violence and forced displacement, the comparative framework from India and Nepal, and the comprehensive reform proposals that would bring the Hindu guardianship and custody law in Bangladesh into conformity with contemporary child rights standards.

PART NINE

The Architecture of Dispossession: Enemy Property Laws, the Vested Property Regime, the Structural Disenfranchisement of Hindu Landowners, and the Comprehensive Framework for Restitution and Property Security in Bangladesh

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FOREWORD TO PART NINE

There is a particular category of injustice that is more dangerous than ordinary injustice precisely because it disguises itself as law. The Vested Property regime of Bangladesh represents one of the most sustained, legally sophisticated, and institutionally entrenched instruments of minority dispossession that the modern legal world has produced. It is a regime that has operated continuously, across changes of government, across declarations of secularism and declarations of Islam as state religion, across military dictatorships and elected governments, across international condemnations and domestic reform promises, for more than six decades. It has reduced the Hindu share of Bangladesh's population from approximately thirty percent at the time of Partition to something approaching eight percent today. It has stripped approximately 1.64 million acres of agricultural land from Hindu households. It has rendered forty-three percent of Hindu families in Bangladesh victims of state-sanctioned property expropriation. It has contributed more directly and more measurably to the demographic transformation of

Bangladesh than any other single legal mechanism. And it remains, even as of the writing of this volume in April 2026, substantially unreformed.

This Part examines the Vested Property regime in all its dimensions. It examines its historical origins in the colonial and Pakistan-era property law, its legislative architecture as enacted and amended in Bangladesh, the political economy that sustained it across decades of ostensibly different governments, its devastating quantitative impact as documented by economists and sociologists, its particular violence against Hindu women, its constitutional illegitimacy, its incompatibility with international human rights law, and the comprehensive reform framework that justice demands. It examines recent developments including the February 2026 elections that returned the Bangladesh Nationalist Party to power with a supermajority and the questions of minority property security that the new government has inherited but not yet meaningfully addressed.

The analysis in this Part is necessarily situated within the broader jurisprudential framework that this treatise has developed across its preceding eight parts. The Vested Property regime is not a discrete aberration. It is connected, organically and systemically, to the denial of inheritance rights to Hindu women that we examined in Part Three, to the inadequacy of maintenance law examined in Part Eight, to the vulnerability of Hindu religious institutions examined in Part Six, and to the caste-based vulnerabilities examined in Part Seven. To understand any one of these dimensions of Hindu legal vulnerability in Bangladesh in isolation from the others is to misunderstand the architecture of structural dispossession that this treatise sets out to expose and dismantle.

This Part proceeds through sixteen chapters. It aims to be the most comprehensive academic treatment of the Vested Property question in Bangladesh available in the English language, combining doctrinal legal analysis with historical investigation, political economy, jurisprudential philosophy, comparative law, and concrete reform prescription.

CHAPTER ONE: THE PARTITION CATASTROPHE AND THE ORIGINS OF ENEMY PROPERTY THINKING

1.1 Property, Migration, and the Colonial Legal Imagination

The story of the Vested Property regime begins not in 1965 with the Enemy Property Act, and not even in 1947 with the Partition of British India, but considerably earlier, in the deep structure of colonial property law and its relationship to the religious communities of Bengal. To understand why the Enemy Property Act took the specific form it took, and why it was so easily repurposed as an instrument of minority dispossession, one must first understand how colonial law had already shaped the relationship between religion, identity, and property in Bengal.

The British colonial administration in India developed, over the course of the nineteenth and early twentieth centuries, a system of property law that was simultaneously universal and

communal. It was universal in the sense that the same formal institutions of land registration, mortgage, and transfer applied across the territory. It was communal in the sense that the personal law governing inheritance, succession, and family property remained distinctly different for different religious communities. The Dayabhaga school of Hindu law governed inheritance among Hindu Bengalis. Muslim personal law governed inheritance among Muslim Bengalis. The two systems operated in parallel, producing different outcomes for similarly situated individuals depending on their religious identity.

This communalization of property law had a critical consequence that became apparent only during the catastrophe of Partition. When the political division of Bengal in 1947 created international boundaries that bisected communities, neighborhoods, and families, property rights became immediately entangled with questions of nationality, loyalty, and religious identity. A Hindu family with members on both sides of the new international boundary, some remaining in East Pakistan and some having moved to West Bengal, suddenly found itself in a situation where the property rights of its members were uncertain, contested, and potentially subject to state intervention on grounds that had nothing to do with the law of property as such.

The British colonial administration had developed certain legal mechanisms for dealing with property abandoned by persons who moved between territories. The concept of evacuee property, developed most extensively in the context of population movements following Partition, provided a legal template for state acquisition of property whose owners had departed. This template was not inherently targeted at any particular religious community. But in the specific context of the Bengal Partition, where the overwhelming majority of persons crossing from East Pakistan to West Bengal in the years immediately following 1947 were Hindus, and the overwhelming majority of persons crossing in the other direction were Muslims, the evacuee property framework operated in practice as an instrument of Hindu dispossession.

The numbers are staggering and must be placed before the reader at the outset of this analysis. At the time of the 1947 Partition, Hindus constituted approximately twenty-eight to thirty percent of the population of East Bengal, the territory that became East Pakistan and subsequently Bangladesh. By 1971, the Hindu share of the population had fallen to approximately eighteen to twenty percent. By 2022, it had fallen to approximately seven to eight percent. This demographic transformation of historic scale was not produced solely by the Enemy Property and Vested Property laws. Communal violence, political persecution, economic discrimination, and what one might call a general atmosphere of existential insecurity for religious minorities in a majority-Muslim state all contributed. But the property laws played a uniquely central and causally significant role. They were the mechanism through which insecurity was converted into permanent dispossession, through which temporary migration became irreversible loss, and through which communal hostility was given legal sanction and institutional permanence.

1.2 The 1947 Partition and the Immediate Property Crisis

The Partition of British India in August 1947 produced, in Bengal as elsewhere, one of the largest forced migrations in human history. In the Punjab, the migration was rapid, violent, and largely complete within months. In Bengal, the process was slower, more protracted, and in some

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ways more cruel precisely because it was not rapid. Hindus from East Bengal did not flee all at once. Many remained, hoping that the new state of Pakistan would honour its constitutional commitments to minority rights. Others left temporarily, intending to return when the situation stabilized. Others moved back and forth across the border as conditions changed. This pattern of partial, temporary, and uncertain movement created legal complications that the Pakistani and subsequently the Bangladeshi states exploited systematically.

The first significant piece of legislation in what would become the Vested Property regime was the East Bengal Emergency Requisition of Property Act of 1948. This Act empowered the provincial government to requisition properties for public purposes. On its face, this was an emergency measure of general application. In practice, in the specific context of post-Partition Bengal, it was applied primarily to properties whose owners had crossed to West Bengal, and those owners were predominantly Hindu. The requisition power was not limited by any requirement of compensation at market value, any requirement of eventual restoration, or any procedural safeguard that would have protected property owners against arbitrary exercise of state power.

The East Bengal Evacuees Administration of Immovable Property Act of 1951 went further. This Act created the category of "evacuee property," defined to include property whose owner had "evacuated" to India. The definition of evacuation was broad enough to encompass not merely permanent emigrants but persons who had made temporary visits to West Bengal for commercial, family, or religious purposes. The legal consequence of being classified as an evacuee was that one's property came under government administration, effectively a form of custodianship that typically preceded permanent dispossession.

The crucial jurisprudential point about these early laws is that they introduced a conceptual framework in which the state's power over property was tied not to ordinary legal categories of title, contract, or succession but to the political category of loyalty. A person's property became vulnerable not because they had committed any wrong in the ordinary legal sense but because they belonged to a community whose members were statistically more likely to have connections across the new international boundary. This conflation of communal identity with political loyalty, of religious affiliation with suspicion of enemy connection, was the seed from which the Enemy Property Act would grow.

1.3 The 1952 Prevention of Property Transfer Act and the Tightening Noose

The East Pakistan Prevention of Transfer of Property and Removal of Documents and Records Act of 1952 added another dimension to the emerging architecture of dispossession. This Act made it illegal for certain categories of persons to transfer their properties without government permission. The practically inevitable result was that Hindu families who wished to sell their properties before leaving for India found themselves legally prohibited from doing so, which meant that they often left without being able to liquidate their assets, which in turn meant that their properties were more likely to be classified as evacuee or abandoned property subject to government acquisition.

The 1952 Act illustrates a pattern that would recur throughout the history of the Vested Property regime: the use of apparently neutral legal mechanisms to trap minority property owners in situations where any course of action available to them would result in property loss. If they stayed and continued to hold the property, they might face communal violence or economic pressure. If they attempted to leave and sell first, the 1952 Act prohibited the transfer without government permission. If they left without selling, the evacuee property laws made their holdings vulnerable to state acquisition. The legal architecture was, in effect, a carefully constructed cage whose walls closed regardless of which direction the owner moved.

This pattern has significant theoretical implications that demand attention. In the Western liberal legal tradition, property rights are typically conceptualized as negative rights, as rights against state interference, as rights that the state must respect by refraining from taking property without due process and just compensation. The Vested Property regime represents a sophisticated subversion of this conceptualization. It did not simply take property in the obvious sense of confiscation. It created legal conditions in which property rights became worthless, in which the legal system itself was structured to ensure that property would flow in a particular direction regardless of the nominal rights of the owner. This is what Professor Roberto Unger, in a different but related context, called the use of law to entrench outcomes that the overt legal commitments of the system would seem to prohibit. The formal law of property said that Hindu owners had rights. The operational architecture of the legal system ensured that those rights could not be exercised.

1.4 The Disturbed Persons Rehabilitation Ordinance 1964 and the Pre-War Architecture

The East Pakistan Disturbed Persons Rehabilitation Ordinance of 1964 was enacted in the aftermath of communal riots that swept East Pakistan in early 1964, following violence against Muslims in Kashmir that provoked retaliatory attacks on Hindu communities across East Pakistan. This Ordinance created mechanisms for the administration of property belonging to persons displaced by communal disturbances. Its stated purpose was the rehabilitation of displaced persons. Its practical effect was to provide another legal instrument for the acquisition and redistribution of Hindu-owned property.

The 1964 Ordinance matters for our analysis not merely because of its specific provisions but because of the context in which it was enacted. The communal riots of 1964 produced another large wave of Hindu migration from East Pakistan to West Bengal. In the legal framework created by the 1948 Act and the 1951 Act, this migration made the migrants' remaining family members' properties more vulnerable to government acquisition. The 1964 Ordinance expanded the state's capacity to deal with this newly enlarged stock of potentially "disturbed" property. The cycle of communal violence producing migration, and migration producing property vulnerability, and property vulnerability making remaining Hindus more insecure and hence more likely to migrate themselves, was already, by 1964, a well-established dynamic. The law did not initiate this cycle. But it provided the institutional mechanism through which the cycle operated to produce permanent and legally sanctioned dispossession.

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The East Pakistan Disturbed Persons Rehabilitation Ordinance of 1964 is also significant because it demonstrates that the Enemy Property Act of 1965 did not emerge from nothing. By 1965, when the Indo-Pakistani War of September of that year provoked the formal Enemy Property legislation, a substantial legal architecture for the acquisition and administration of Hindu-owned property had already been built up across seventeen years of Pakistani rule. The Enemy Property Act of 1965 did not introduce a new concept. It dramatically expanded and systematized a set of practices that had been developing since 1947.

CHAPTER TWO: THE ENEMY PROPERTY ACT OF 1965: LEGAL ARCHITECTURE AND POLITICAL LOGIC

2.1 The War Context and the Legislative Moment

On September 6, 1965, Pakistani and Indian forces engaged in direct military conflict across the border in the Punjab. The conflict lasted seventeen days before a ceasefire was arranged under United Nations auspices. During those seventeen days, and in the political atmosphere that preceded and followed them, the Pakistani government enacted the Enemy Property (Custody and Registration) Order of 1965, typically referred to simply as the Enemy Property Act. This legislation had an immediate, obvious military justification. In time of war, states routinely restrict the activities of nationals of enemy states who are present in their territory and acquire custody of assets belonging to enemy nationals. This is a recognized feature of the international law of armed conflict and is practiced by virtually all states during wartime.

The critical problem with the Enemy Property Act of 1965 was not, in the first instance, that it existed. The problem was how it was defined, implemented, and subsequently continued after the conditions that supposedly justified it had long since ceased to exist. The Act defined "enemy" in terms that made the category applicable to any person who had, or was deemed to have, connections with India. In the specific demographic context of East Pakistan in 1965, this definition applied overwhelmingly to Hindus. The community that had the most extensive family, social, and economic connections to India was the Hindu community, which had seen a significant fraction of its members migrate to West Bengal since 1947 and which maintained religious, cultural, and familial ties across the now international boundary.

Under the Enemy Property Act, the property of persons classified as enemies was placed under government custody. The state became the custodian rather than the owner, in theory, which meant that the original owner retained a residual claim to restoration of the property when the conditions that justified the custodianship ceased. In practice, this theoretical distinction between custody and ownership quickly eroded. Properties placed under government custody were typically assigned to administrators, leased to third parties, or in other ways incorporated into the ordinary political economy of patronage and redistribution that operated in East Pakistan as elsewhere in the subcontinent.

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2.2 The Doctrinal Architecture: Custody, Enemy Classification, and the Procedure of Dispossession

The legal mechanics of the Enemy Property Act deserve careful doctrinal examination because it is in those mechanics that the structural injustice of the regime is most clearly visible. The Act required the registration of enemy property. Registration was notionally the state's method of taking inventory of assets that required custody. But the registration process itself became an instrument of dispossession because it required a determination of who counted as an enemy, and that determination was made by government officials without meaningful procedural safeguards.

The concept of "enemy" under the Act was not limited to Pakistani citizens who had acquired Indian citizenship or who had fled to India. It extended to persons who had departed from East Pakistan and whose whereabouts were uncertain, to persons who had family members in India, and, in the looser administrative practice that quickly developed, to persons who were simply assumed to have enemy connections on the basis of their Hindu religious identity. The Act created a presumption that could be applied without individual inquiry, a presumption grounded in communal identity rather than individual conduct, that is fundamentally incompatible with the rule of law as understood in any serious jurisprudential tradition.

The procedural inadequacy of the Enemy Property Act cannot be overstated. Property owners who found their properties registered as enemy property had virtually no effective legal recourse. The administrative decisions of the Enemy Property custodian were not subject to meaningful judicial review. Courts were reluctant to interfere with what were framed as national security measures. The combination of an extremely broad substantive definition of enemy status, an absence of individual procedural safeguards, and limited judicial review created a regime in which property could be seized on minimal grounds and restored only with enormous difficulty.

Professor Abul Barkat of Dhaka University, whose quantitative research on the Vested Property regime constitutes the single most important empirical contribution to the academic literature on this subject, estimated in his 2000 study that the Enemy Property Act in its various manifestations directly affected approximately 748,850 Hindu families and deprived them of approximately 1.64 million acres of agricultural land. This figure, representing about fifty-three percent of all land owned by the Hindu community and approximately 5.3 percent of the total land area of Bangladesh, gives some sense of the scale of what the legal mechanism made possible.

2.3 The East Pakistan Enemy Property Lands and Buildings Administration and Disposal Order 1966

The Enemy Property Act of 1965 was followed in 1966 by the East Pakistan Enemy Property Lands and Buildings Administration and Disposal Order. This Order extended the scope of the enemy property regime to cover not merely assets of persons currently classified as enemies but assets that were "associated with" enemy persons or enterprises. The practical effect was to widen the net of potential property acquisition significantly. A property that had been sold by a Hindu family to a Muslim purchaser before the 1965 Act might still be classified as enemy

property if the original owner was subsequently classified as an enemy. Properties held jointly by Hindu families in which some members had migrated to India and some had remained in East Pakistan could be entirely classified as enemy property even though some of the owners were present and actively asserting their claims.

The 1966 Order also introduced provisions for the "disposal" of enemy property, not merely its administration. This was a significant escalation. Under the original 1965 Act, the state was a custodian, nominally holding the property in trust for its eventual restoration to the legitimate owner. The 1966 Order created mechanisms by which custodied property could be disposed of, that is, sold, leased, or otherwise transferred, which in practice meant that the temporary custody that the 1965 Act contemplated was converted into permanent alienation of the property from its original owners.

2.4 The Enemy Property (Continuance of Emergency Provision) Ordinance 1969 and the Final Pre-Independence Stage

The Enemy Property (Continuance of Emergency Provision) Ordinance of 1969 extended the enemy property regime into the period of political turmoil that preceded Bangladesh's independence. By 1969, East Pakistan was in a state of intense political agitation. The student uprising of that year, the mass movement against Ayub Khan, and the growing momentum for Bengali autonomy and eventually independence dominated the political landscape. In this context, the continuation of the Enemy Property regime might have seemed an anomaly, a relic of the 1965 war that had become irrelevant. In fact, the 1969 Ordinance demonstrates that the Enemy Property regime had, by this point, developed a life independent of its original military justification. It had become a mechanism of redistribution and patronage that served the interests of powerful social and political actors quite independently of any national security rationale. Repealing it would have required those actors to give up benefits that had become entrenched. The political economy of the enemy property regime had, by 1969, become self-sustaining.

This point deserves extended consideration because it illuminates a crucial feature of the Vested Property regime that persisted through independence and continues to operate in Bangladesh today. Once a legal mechanism for redistribution becomes established and its beneficiaries become politically organized, repeal requires not merely legislative will but the defeat of a well-organized interest group that has a direct material stake in the continuation of the unjust arrangement. The beneficiaries of the Enemy Property regime in East Pakistan were not a small or marginal group. They were local political leaders, government officials, land administrators, and entrepreneurs who had acquired former Hindu properties at well below market value, who had built farms and businesses on them, and who had integrated those acquisitions into their personal and family wealth. Any serious effort at restitution would require them to disgorge those gains, and they could be expected to resist with every political resource at their disposal.

CHAPTER THREE: BANGLADESH'S INHERITANCE OF DISPOSSESSION: THE 1971-1974 PERIOD

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3.1 The Liberation War and the Property Question

The Bangladesh Liberation War of 1971 was a catastrophic event whose property dimensions have received less scholarly attention than they deserve. During the nine months of conflict between March and December 1971, the Pakistani military and its local collaborators, the Razakars and Al-Badr militias, committed systematic atrocities across East Pakistan. These atrocities were directed particularly at Hindus, who were perceived as pro-Indian and hence anti-Pakistani, and at politically active Bengalis of all religious backgrounds who supported the independence movement.

The violence of 1971 produced a massive displacement of the Hindu population. Approximately ten million people fled to India during the Liberation War, and the overwhelming majority of these refugees were Hindu. Their properties were left behind. In the legal framework that existed under Pakistani law, these properties were potentially classified as enemy property or evacuee property by the Pakistani authorities. Properties of Hindus who had fled to India could be, and in many cases were, occupied by local actors, sometimes with official Pakistani sanction and sometimes simply through opportunistic seizure in the chaotic conditions of war.

When Bangladesh became independent in December 1971, the new state faced a complex property situation. Large numbers of Hindus who had fled to India during the Liberation War were returning. Their properties had been occupied, sometimes by persons who had actively collaborated with the Pakistani forces and sometimes by persons who had simply taken advantage of the vacancy. The new state of Bangladesh, committed at its founding to secularism and the equal citizenship of all Bangladeshis regardless of religion, faced a choice: it could systematically restore Hindu property to its rightful owners, or it could allow the dispossession to stand, and it could do so under whatever legal framing was available.

3.2 President's Order Number 29 of 1972: The Critical First Step

The decisive moment in the history of the Vested Property regime in independent Bangladesh came not with the formal Enemy Property legislation of 1974 but with President's Order Number 29 of 1972, issued by the government of Sheikh Mujibur Rahman in the early months of the new state's existence. This Order provided for the "vesting" in the government of Bangladesh of properties that had been classified as enemy property under the Pakistani laws. The effect of President's Order 29 was to transfer to the new Bangladeshi state the enemy property portfolio that had been accumulated by the Pakistani state. Properties that had been under Pakistani government custody now came under Bangladeshi government custody.

On the surface, this might seem like a neutral administrative step, simply a transfer of government property from one successor state to another. The critical question was what the new state would do with this portfolio. Would it use President's Order 29 as the mechanism for restoring seized Hindu properties to their legitimate owners? Or would it use it as the mechanism for transferring those properties into Bangladeshi state ownership, to be redistributed according to the patronage priorities of the new political order?

The answer, as subsequent events would demonstrate with terrible clarity, was the latter. President's Order 29 of 1972 did not restore enemy-classified properties to Hindu owners. It transferred them to the Bangladeshi state, leaving their ultimate disposition to subsequent legislative and administrative action that would take years to materialize and would, when it finally came, be deeply inadequate.

It is worth pausing here to note the extraordinary nature of what the government of Sheikh Mujibur Rahman did in 1972. Sheikh Mujib was the founding father of Bangladesh, the leader of the independence movement, a man who had himself been imprisoned by Pakistan for his championing of Bengali rights, a politician whose party had consistently received the votes of the Hindu minority as well as the Muslim majority. His government had proclaimed secularism as one of the four founding principles of the new republic. And yet, in its very first year of existence, that government took the former enemy properties of Hindu families and transferred them not back to those families but to the state of Bangladesh.

This action requires explanation. Several factors appear to have contributed. The new government faced enormous economic pressures in the aftermath of the devastation of the Liberation War. The land holdings that had come under government custody through the enemy property laws represented a significant economic resource. There was political pressure from local Awami League activists who had taken possession of vacated Hindu properties and who were reluctant to give them up. There was a genuine administrative complexity in identifying the rightful owners of particular properties, many of whom were still in India as refugees. And there was a political calculation that the Hindu minority, however aggrieved, had no realistic political alternative to the Awami League and hence did not need to be compensated by actual restoration of their properties.

3.3 The Enemy Property Acts of 1974 and the Consolidation of Dispossession

The Enemy Property (Continuance of Emergency Provisions) Repeal Act of 1974, Act XLV, and the Vested and Non-Resident Property Administration Act of 1974, Act XLVI, together constitute the foundational legislative architecture of the Vested Property regime in independent Bangladesh. Their very titles are instructive and require careful analysis.

The title of Act XLV refers to the "repeal" of the Emergency Provisions that had kept the enemy property regime in operation since 1965. This might suggest that the Act was a liberalizing measure, an end to the discriminatory enemy property framework. In reality, the repeal of the Emergency Provisions was coupled with the immediate re-enactment of their substantive content in a new form through Act XLVI. The enemy property regime was not ended. It was renamed and restructured. The word "enemy" was replaced with the word "vested," which sounds more administrative and less accusatory but describes the same set of legal relations. Properties that had been classified as enemy property became vested properties. Their owners, or former owners, were now classified not as enemies but as non-residents. The state remained their custodian, with powers over their administration and disposition that were barely diminished from those under the Pakistani Acts.

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The choice of the term "non-resident" rather than "enemy" to describe the persons whose property was at risk is legally significant. The non-resident classification was broader in some respects than the enemy classification. A person could be classified as a non-resident on the basis of having left Bangladesh permanently or even temporarily. The threshold for non-residence was low. A Hindu family that had sent a son or daughter to study in India, or whose elderly members had moved to West Bengal to be with relatives, might find that this made the entire family's property vulnerable to vesting in the state as non-resident property. The extension of the classification to non-residents rather than limiting it to enemies potentially expanded the pool of affected persons to include many Hindus who had perfectly legitimate reasons for their Indian connections and who had no intention of permanently leaving Bangladesh.

3.4 The 1976 Amendment: From Custody to Ownership

The Vested and Non-Resident Property Administration Act of 1974 was amended in 1976 in a manner that fundamentally changed its character. Under the original Act, as under the 1965 Enemy Property Act, the state's relationship to vested properties was framed as custodianship rather than ownership. The theoretical implication was that the original owners retained residual rights that could eventually be vindicated. The 1976 Amendment, issued by the military government of Ziaur Rahman, converted the state from custodian to owner. Vested properties were no longer merely under state administration pending eventual restoration. They became state property, with the state acquiring full title.

This amendment was devastating in its consequences. Once the state became the owner rather than merely the custodian of vested properties, the original owners' residual claims were not merely weakened but effectively extinguished. The state could now sell, lease, or otherwise dispose of vested properties as owner, and third-party purchasers or lessees of state-owned vested property could claim the protection of the bona fide purchaser doctrine against restoration claims by the original Hindu owners.

The 1976 Amendment also initiated a new phase in the political economy of the vested property regime. When the state was merely the custodian of vested properties, the beneficiaries were limited to administrators and lessees. When the state became the owner, the properties became available for redistribution as a form of patronage. Government officials, political allies, and influential local leaders could receive vested properties as outright transfers rather than merely as leases. This expanded the circle of beneficiaries and deepened their stake in the continuation of the regime.

The Ziaur Rahman government, which enacted the 1976 Amendment, was also the government that in 1977 removed "secularism" from the four founding principles of the Bangladesh Constitution, replacing it with references to "absolute trust and faith in Allah." The elimination of secular foundational principle and the conversion of vested property from custody to state ownership occurred within the same governmental period. This is not a coincidence. It reflects a coherent political orientation in which the privileged position of the Muslim majority, both ideologically in the constitution and materially in the distribution of property, was being consolidated simultaneously.

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CHAPTER FOUR: THE VESTED PROPERTY ACT IN OPERATION: MECHANICS, ABUSES, AND SOCIAL CONSEQUENCES

4.1 The Administrative Machinery of Dispossession

The Vested Property regime operated through a bureaucratic machinery that was, in its formal structure, governed by the Ministry of Land and its subordinate offices at the district and sub-district levels. The Land Revenue Administration maintained registers of vested properties. The office of the District Commissioner, operating through Sub-Divisional Officers and local revenue officials, was responsible for identifying properties to be classified as vested, taking them into government custody or ownership, and administering them thereafter.

In practice, this bureaucratic machinery was thoroughly corrupted and politicized. The determination of whether a particular property was vested property involved extensive discretion at multiple levels. Local revenue officials who had personal, political, or economic interests in particular properties had considerable latitude to classify them as vested. Conversely, properties that should have been classified as vested might escape classification if their nominal owners had the right political connections or paid the appropriate bribes. The system was designed for abuse, and it was systematically abused.

The corruption of the vested property administration took several characteristic forms. One common form was the "listing" of Hindu-owned properties on the vested property register on the basis of fabricated or fraudulent claims that the owner had become a non-resident. A local political leader who coveted a Hindu-owned piece of land could arrange for that land to be registered as vested property by making representations to revenue officials about the owner's non-resident status, even if the owner was in fact present and actively using the land. The owner would then be required to challenge the registration through an appeals process that was slow, expensive, and frequently corrupted in its own right.

Another common abuse was the backdating of non-residence classifications. The Enemy Property Act of 1965 applied to persons who had become non-residents before a certain date. The Vested Property Act of 1974 applied to non-residents as of its enactment. By falsely certifying that a particular Hindu landowner had become a non-resident at an earlier date than was actually the case, revenue officials could bring that person's property within the scope of the Acts even if they did not in fact meet the statutory criteria.

The gender dimension of these abuses deserves particular attention and will receive extended treatment in a later chapter. Here it is sufficient to note that Hindu women's properties, whether inherited through the limited estate framework of the Dayabhaga system or received as Stridhana, were especially vulnerable to vested property classification. This was partly because the inheritance rules governing Hindu women left the documentation of their property rights often incomplete or contested, and partly because Hindu women had less access to the political and social networks that could protect against fraudulent vested property listings, and partly

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because the physical vulnerability of Hindu women as single or widowed heads of household made them especially susceptible to the combination of violence and legal manipulation that typically preceded fraudulent vested property classification.

4.2 Violence, Intimidation, and the Extra-Legal Dimension

The formal legal architecture of the Vested Property regime was inseparable from an extra-legal dimension of violence and intimidation that operated alongside it. The typical sequence of Hindu dispossession did not begin with a government official making a formal determination that a property was vested. It typically began with the application of communal pressure, economic coercion, or outright violence against the Hindu family in question, which caused them to flee temporarily or permanently, which then triggered the formal legal mechanisms of vested property classification.

This sequencing meant that the legal mechanism was typically downstream of violence rather than independent of it. The law did not create the violence. But it provided the institutional machinery through which the consequences of violence were made permanent. A Hindu family driven off their land by communal intimidation might, if the law provided adequate protection, eventually be able to return and reassert their claim. The Vested Property regime ensured that they could not. By classifying the abandoned property as vested and eventually distributing it to third parties, the legal system made the consequences of violence irreversible.

This interaction between violence and law is of great theoretical significance. Critical legal scholars from Roberto Unger to Patricia Williams have argued that law and violence are not simply opposites but deeply interconnected. Law, in their analysis, frequently serves to legitimate, consolidate, and make permanent the outcomes of prior violence. The Vested Property regime is a particularly stark illustration of this argument. The violence of communal riots and directed harassment drove Hindus off their land. The law then ensured they could not return. In this sense, the Vested Property regime was not merely a cause of Hindu dispossession alongside communal violence. It was the mechanism through which communal violence was converted into legally sanctioned, permanent, institutionally entrenched dispossession.

4.3 The Gopal Chandra Dynamic: Legal Processes and Hindu Property Insecurity

The interaction of the Vested Property regime with the broader structure of Hindu personal law created what might be called the Gopal Chandra dynamic, a reference to the landmark case that exemplifies how multiple legal vulnerabilities compound each other to produce outcomes that no single legal provision alone could generate. When a Hindu family faced vested property classification, the absence of clear, registered, and codified rules of succession under Hindu law made it extremely difficult for surviving family members to establish their legal standing to contest the classification. Courts required evidence of title and succession that the uncodified and textually complex Dayabhaga rules made very difficult to produce in the form that formal legal proceedings required.

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A Hindu widow whose husband's land was being classified as vested property faced a compound vulnerability. Under the Dayabhaga rules, she held at best a limited estate in the land, not absolute ownership. Her standing to assert a claim against the vested property classification was therefore limited. The male reversioners who held the ultimate right of inheritance might not be present or willing to assist. The complex rules of Dayabhaga succession meant that the question of who exactly was entitled to the land might itself be genuinely contested among surviving family members. In this context of unclear and contested personal law rights, the revenue officials classifying the property as vested held an enormous practical advantage, since they did not need to prove that the property was properly vested; the burden fell on the dispossessed family to prove that it was not.

This interaction between vested property law and Hindu personal law demonstrates conclusively why the reform of Hindu personal law and the reform of the vested property regime cannot be treated as separate projects. The inadequacy of Hindu personal law in specifying and documenting women's property rights, the absence of codification, and the complexity of the Dayabhaga rules together made the vested property mechanism easier to operate against Hindu families than it would have been against communities with clearer, more codified, and more easily demonstrable property rights under their personal law.

CHAPTER FIVE: THE ABUL BARKAT RESEARCH AND THE QUANTITATIVE DIMENSIONS OF DISPOSSESSION

5.1 The Significance of Professor Barkat's Work

The work of Professor Abul Barkat of the Economics Department of Dhaka University represents the most important empirical contribution to the academic understanding of the Vested Property regime. His 2000 book, published with the Association for Land Reform and Development, "Inquiry into Causes and Consequences of Deprivation of Hindu Minorities in Bangladesh through the Vested Property Act," and his subsequent publications, most notably "Deprivation of Hindu Minority: A Story of Perpetual Discrimination," transformed the academic and political discourse about the Vested Property regime by providing systematic quantitative evidence of its scale and impact.

Before Barkat's work, the scholarly discourse on the Vested Property regime was dominated by qualitative accounts, legal analysis, and political argument. What was lacking was systematic empirical data on the extent of dispossession. Barkat and his team conducted large-scale survey research covering Hindu households across Bangladesh, documenting the incidence and extent of vested property classifications, the processes by which they occurred, and their economic, social, and demographic consequences.

The findings were staggering. Barkat estimated that the Vested Property regime, across its full history from 1965 to 2000, had directly affected approximately 748,850 Hindu families. The total agricultural land lost through the regime was approximately 1.64 million acres, equivalent

to fifty-three percent of the total land owned by the Hindu community and 5.3 percent of the total land area of Bangladesh. The economic value of this lost land, even at the relatively low land prices prevailing at the time of the research, was enormous. Barkat estimated that the land grab through the vested property laws was responsible for the eviction of approximately six million Hindu individuals from their ancestral land properties and was a major cause of their emigration to India.

5.2 Who Benefits: The Political Affiliation Analysis

One of the most politically consequential findings of Barkat's research concerned the distribution of vested property among beneficiaries. The research found that the benefits of the vested property regime were distributed across political party lines, though not evenly. The analysis of direct beneficiaries of appropriated property by political affiliation revealed a pattern that cut across the partisan divide in Bangladesh's politics. The Awami League, the Bangladesh Nationalist Party, and the Jatiya Party all had significant numbers of activists and supporters who had benefited from the redistribution of Hindu-owned vested property.

This finding is of profound political significance. It explains why the Vested Property regime was so difficult to reform even under governments that were ostensibly committed to the equal rights of religious minorities. Both major political parties in Bangladesh, the Awami League and the Bangladesh Nationalist Party, had significant contingencies of activists and supporters whose material interests were directly tied to the continuation of the regime. Any government that seriously attempted to restore vested properties to their Hindu owners would have been acting against the material interests of a portion of its own support base. The political economy of the regime had created a cross-cutting coalition of beneficiaries that made reform extremely costly for any government that attempted it.

Barkat's research also documented the identity of different categories of beneficiaries. He distinguished between what he called "active grabbers," persons who had directly appropriated Hindu property through a combination of coercion and legal manipulation, "passive beneficiaries," persons who had purchased vested properties from the state at below-market prices without direct involvement in the dispossession, and "structural beneficiaries," persons who had benefited from the increased availability of agricultural land on the market as Hindu families were driven out. All three categories had interests in opposing restoration.

5.3 The Demographic Consequences: Connecting Dispossession to Population Decline

Perhaps the most significant finding of Barkat's research, and the most important for understanding the full social consequences of the Vested Property regime, was the quantitative relationship between dispossession and demographic change. The research documented that the Vested Property regime was a significant factor, though not the only factor, in the demographic transformation of Bangladesh's Hindu population from approximately thirty percent at Partition to approximately eight percent in the early twenty-first century.

The mechanism connecting dispossession to demographic change was not primarily direct violence, though direct violence was also a factor, but economic pressure and insecurity. Hindu families stripped of their agricultural land by vested property classification lost their primary source of livelihood. With no land and limited alternative economic opportunities in a country where economic discrimination against religious minorities was pervasive, the rational economic calculation for many Hindu families pointed strongly in the direction of emigration to India. This emigration was often described as voluntary by the authorities, and the properties left behind were therefore classified as vested, completing the cycle: dispossession created the conditions for emigration, and emigration triggered further dispossession.

Barkat's research established a feedback loop: vested property classification made Hindu families economically vulnerable, economic vulnerability increased the likelihood of emigration, emigration triggered further vested property classification of the emigrant family's remaining assets, and this further dispossession made the remaining Hindu neighbors of the emigrant family more insecure, increasing their own likelihood of emigration. The regime was self-reinforcing. Each act of dispossession created the conditions for further acts of dispossession.

This feedback dynamic has theoretical implications that connect to some of the most important concepts in contemporary legal sociology. Robert Ellickson's work on how legal rules interact with social norms to produce community stability or instability, and Frances Fox Piven and Richard Cloward's analysis of how formal institutions reinforce and entrench social inequalities, both illuminate aspects of what was happening in Bangladesh's Hindu communities under the Vested Property regime. The legal mechanism was not operating in isolation. It was interacting with communal norms, economic structures, and social dynamics to produce a cumulative process of displacement that was far more powerful than any single legal provision alone could have achieved.

5.4 The Gender Distribution of Victimization: Women as Primary Targets

Barkat's research also documented what subsequent researchers have confirmed and amplified: that the Vested Property regime operated with particular severity against Hindu women. The reasons for this gendered distribution of victimization are multiple and interconnected, and they connect directly to the analysis of Hindu personal law's treatment of women's property rights that this treatise has developed in preceding parts.

Hindu women's property rights under the Dayabhaga system were, as we have seen in Part Three, significantly weaker than those of Hindu men. Women typically held limited estates rather than absolute ownership. Their right to sell or mortgage the property they held was constrained by the doctrine of legal necessity. The documentation of their property rights was typically less formal and less clear than that of male property holders. All of these features of Hindu personal law made women's property holdings more vulnerable to vested property classification.

There was also a more direct dimension of gendered vulnerability. Hindu widows living alone on family properties after the death of their husbands or the emigration of adult sons were

particularly vulnerable to the combination of physical intimidation and fraudulent legal classification that typically preceded vested property appropriation. Without male family members to provide protection and political connections, these women were easy targets for local power holders seeking to acquire their land. The Vested Property regime provided the legal framework within which the consequences of such targeting could be made permanent.

Barkat estimated that Hindu women-headed households faced an even higher rate of vested property victimization than Hindu households generally. The intersection of gender vulnerability and communal vulnerability created a category of persons who were, in effect, without meaningful legal protection in the face of the vested property machinery.

CHAPTER SIX: THE POLITICAL ECONOMY OF THE VESTED PROPERTY REGIME: UNDERSTANDING THE PERSISTENCE OF INJUSTICE

6.1 The Theoretical Framework: Property Law as Political Economy

The persistence of the Vested Property regime across six decades and multiple governments of radically different political orientations demands theoretical explanation. This is not a case of simple governmental indifference to the rights of a minority community, though indifference has certainly been a factor. It is a case of active perpetuation of an unjust system that serves the material interests of a significant portion of the politically active population. Understanding this persistence requires the tools of political economy as much as the tools of legal analysis.

The political economy of the Vested Property regime can be analyzed through several theoretical lenses. From the perspective of public choice theory, associated with economists James Buchanan and Gordon Tullock, the persistence of the regime reflects the logic of concentrated benefits and diffuse costs. The beneficiaries of the regime, those who have acquired former Hindu properties at below-market prices, constitute a relatively small but intensely motivated interest group with a large stake in the continuation of the arrangement. The victims of the regime, Hindu property owners and their descendants, constitute a larger group but one with diminished political voice, limited organization, and, crucially, for those who remain in Bangladesh, significant personal vulnerability to retaliation if they press their claims too aggressively.

From the perspective of what Robert Cooter and Thomas Ulen have called the economics of legal entitlements, the Vested Property regime represents a legal system that has consistently protected possession over title, that has privileged the de facto control of politically connected actors over the de jure rights of politically vulnerable ones. The economic theory of property rights holds that clearly defined, securely enforced property rights are a precondition for efficient resource allocation and long-term investment. By creating a regime in which Hindu-owned properties were always potentially at risk of vested property classification, the Acts created exactly the kind of insecure property rights that economic theory predicts will discourage investment and efficient use.

6.2 Party Politics and the Vested Property Calculus

The specific behavior of Bangladesh's two major political parties with respect to the Vested Property regime illustrates the political economy analysis with particular clarity. The Awami League, as the party of Bangladesh's independence, was ideologically committed to secularism and the equal rights of all citizens including the Hindu minority. It consistently received the votes of the overwhelming majority of Bangladeshi Hindus who participated in elections. And yet the Awami League government of 1972-1975 not only failed to restore Hindu properties but enacted legislation that consolidated the vested property regime in its early, most aggressive form.

The Bangladesh Nationalist Party, founded by Ziaur Rahman, has historically been less committed to secularism and has had a more troubled relationship with the Hindu minority. Yet the BNP has also benefited from the redistribution of Hindu properties, and its activists have been among the beneficiaries of the regime. When the BNP has been in government, the implementation of vested property restoration has been even more limited than under the Awami League. The BNP's 2001-2006 government was responsible for the failure to implement the Vested Property Return Act of 2001, passed by the preceding Awami League government in the final days before the election.

This cross-party pattern of benefiting from the vested property regime while failing to reform it is the most powerful evidence that the persistence of the regime cannot be explained primarily by reference to the ideological positions of particular parties. It reflects a structural feature of Bangladesh's political economy in which both major parties have significant constituencies that benefit from the dispossession of the Hindu minority and in which the minority itself, though it votes consistently for the party that treats it less badly, has insufficient political leverage to demand actual reform as the price of its votes.

The February 2026 elections, which returned the BNP to power with a two-thirds supermajority, have not yet produced any significant movement toward vested property reform. The new BNP government has inherited the unresolved vested property question alongside the enormous practical challenges of governance in a country still dealing with the economic and political consequences of the 2024 upheaval. Hindu community organizations have noted that the BNP's promises to protect minority rights during the election campaign have not been followed by concrete legislative action on the vested property issue.

6.3 Islamism, Secularism, and the Vested Property Question

The relationship between political Islam in Bangladesh and the Vested Property regime is complex and deserves careful analysis. It would be too simple to say that the Vested Property regime is a product of Islamist ideology. As we have noted, the regime persists across governments of different religious orientations, and its primary beneficiaries include secular nationalists as much as religious conservatives. However, the ideological dimension of the regime cannot be entirely separated from the political reality of a Muslim-majority state in which religious minority status correlates with political vulnerability.

The Islamist parties in Bangladesh, particularly Jamaat-e-Islami and Hefazat-e-Islam, have generally been silent on the Vested Property question. This silence is itself significant. These parties, which are vocal on questions of Islamic law reform, women's rights as they understand them, and the protection of Muslim religious practices, have not been advocates for the property rights of the Hindu minority. The most that can be said is that they have not been the primary advocates for the regime in ideological terms. But their silence on vested property reform has amounted to tacit support for its continuation.

The more sophisticated Islamic jurisprudential tradition, it should be noted, provides no theological justification for the Vested Property regime. The principles of Islamic law governing property, contract, and the treatment of non-Muslims (dhimmis) in an Islamic state do not sanction the kind of systematic property expropriation that the Vested Property regime represents. Indeed, some Islamic scholars have argued that the treatment of the Hindu minority in Bangladesh violates the standards that Islamic jurisprudence sets for the treatment of non-Muslim communities living under Muslim governance. This argument, if pressed seriously in the Islamic juridical tradition, would actually support rather than oppose vested property reform.

6.4 The Bureaucratic Interest in Perpetuation

Alongside the political interest in maintaining the Vested Property regime, there is a significant bureaucratic interest in its continuation. The administration of vested properties creates opportunities for corruption, rent-seeking, and patronage at multiple levels of the revenue administration. Land revenue officials who administer vested properties have the opportunity to accept payments from third parties seeking to lease or acquire those properties at favorable terms. The listing and de-listing of properties on the vested property register creates opportunities for bribery in either direction. The complex adjudication process through which Hindu families attempt to recover their properties provides opportunities for lawyers, middlemen, and officials to extract fees at every stage.

These bureaucratic interests create a constituency for the continuation of the regime within the state apparatus itself. Even when political leaders have been genuinely committed to reform, as the Awami League government appears to have been in 2001, the implementation of that reform depends on a bureaucracy that has material interests in its failure. The Vested Property Return Act of 2001 established a tribunal system for adjudicating restoration claims. The functioning of that system has been persistently sabotaged by delays, procedural obstruction, missing records, and deliberate administrative non-cooperation that benefits from exactly the kind of bureaucratic corruption described here.

CHAPTER SEVEN: THE GENDER DIMENSION: HINDU WOMEN AS PRIMARY VICTIMS OF THE VESTED PROPERTY REGIME

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7.1 Compounding Vulnerabilities: Personal Law and Property Law

The treatment of Hindu women by the Vested Property regime is a subject that demands extended analysis because it illustrates with particular clarity how the intersection of multiple systems of legal disadvantage can produce outcomes that are qualitatively more severe than any single system could produce alone. Hindu women in Bangladesh face the disadvantages created by the Dayabhaga rules of inheritance, the limitations of the widow's estate, the inadequacy of maintenance law, and the cultural subordination that these legal rules both reflect and reinforce. The Vested Property regime adds to this set of disadvantages a further layer of vulnerability that operates synergistically with the others.

The most fundamental form of this synergy operates through the evidence problem. When a Hindu family's property is classified as vested, the family members who seek to contest the classification must demonstrate their legal connection to the property, that is, their right of ownership or their entitlement to possession under the applicable rules of Hindu personal law. For male family members, particularly for sons in relation to their father's property, this is straightforward: the rules of Dayabhaga succession clearly establish the son's right of inheritance. For female family members, particularly for widows, the demonstration of legal connection is far more difficult. The widow's limited estate is not full ownership. Her right to the property is conditional on her behavior and on the existence or non-existence of male reversioners. The complexity and conditionality of her claim makes it much easier for revenue officials to dismiss it as insufficient to defeat the vested property classification.

The result is a pattern that operates with systematic regularity: when a Hindu family's male members emigrate, the widow who remains is typically unable to effectively contest the classification of the family property as vested. She lacks both the full legal title that would give her standing to contest and the social and political connections that would make her contest effective even if she had standing. The vested property machinery captures the land. The widow is left in a position of extreme vulnerability, dependent on the charity of neighbors and relatives, potentially facing eviction from her home, and without the legal resources to resist.

7.2 The Widow Problem in the Context of Post-Liberation Migration

The pattern described in the preceding section was particularly acute in the aftermath of the 1971 Liberation War, when large numbers of Hindu men had died in the conflict or in communal violence, leaving widows on family landholdings that were particularly vulnerable to vested property classification. A widow whose husband had died during the Liberation War, whose sons were absent or themselves dead, faced a situation in which she was: the sole possessor of a piece of land; legally holding only a limited estate rather than full ownership; without male relatives to contest any administrative proceedings against the land; and without social and political connections that might protect her against revenue official misconduct.

In this context, the Vested Property regime operated not merely as an instrument of economic dispossession but as an instrument of widowhood exploitation at the most extreme level. The combination of the Dayabhaga rules' limitation of women's property rights and the Vested

Property regime's indifference to those limited rights produced a situation in which Hindu widows were among the most systematically and thoroughly dispossessed persons in Bangladesh's legal landscape.

The 1946 Hindu Married Women's Right to Separate Residence and Maintenance Act, as we analyzed in detail in Part Eight of this treatise, provides a right to maintenance from the husband or his estate. But when the husband's estate has been classified as vested property and transferred to the state, the maintenance right becomes practically unenforceable. The widow cannot obtain maintenance from an estate that has been appropriated by the government. The maintenance right and the limited estate right are both rendered worthless by the operation of the vested property mechanism.

This compound failure, the simultaneous collapse of the personal law protections and the property law protections, is one of the most serious injustices in the entire edifice of Hindu law in Bangladesh. It demands a reform response that is equally comprehensive: reform of both the personal law framework governing women's property rights and the vested property framework must proceed together if either is to be effective.

7.3 Women-Headed Households and Targeted Dispossession

Barkat's research and subsequent sociological work by scholars including Hameeda Hossain and Meghna Guhathakurta have documented that Hindu women-headed households faced disproportionately high rates of vested property victimization. This was not random. The targeting of women-headed households reflected a calculation by those seeking to acquire Hindu properties that these households were the most legally vulnerable and the least likely to be able to mount effective resistance.

The typical sequence of events in cases of targeted dispossession of Hindu women-headed households involved several stages. First, local power holders would identify a widow or female-headed Hindu household with desirable land. Second, they would apply a combination of social pressure, economic coercion, and sometimes direct physical intimidation to force the women out of the property, at least temporarily. Third, with the property vacant or the owner intimidated into acquiescence, they would arrange for its classification as vested property through corrupt revenue officials. Fourth, they would acquire the property through the government's redistribution mechanisms at below-market prices or in some cases simply through de facto occupation that was later regularized.

This process illustrates a truth about the relationship between law and social power that feminist legal theory has consistently emphasized. Law does not operate in a social vacuum. Its effects are mediated by the social relations, power structures, and vulnerabilities that exist outside it. The Vested Property law, formally neutral as between genders, operated in a social context in which Hindu women were the most socially and physically vulnerable members of the Hindu community, and that social vulnerability was translated directly into legal vulnerability through the mechanisms we have described.

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CHAPTER EIGHT: THE VESTED PROPERTY RETURN ACT OF 2001: PROMISE, POLITICS, AND BETRAYAL

8.1 The Legislative History and Political Context

The Vested Property Return Act of 2001, formally known in Bengali as the Arpita Sampatti Prattarpon Ain, was passed by the Parliament of Bangladesh in late 2001 as one of the last acts of the outgoing Awami League government of Prime Minister Sheikh Hasina. The timing was not coincidental. The Awami League, facing the general election that would ultimately result in its removal from office, sought to pass the vested property restoration legislation that it had promised to the Hindu minority as a demonstration of its commitment to minority rights.

The Act's passage was itself deeply problematic in procedural terms. It was enacted in a parliamentary session boycotted by the Bangladesh Nationalist Party and its allies, meaning that it lacked the broad legislative consensus that a measure of this significance required. The BNP's boycott signaled from the outset that it would not treat the Act as having broad cross-party legitimacy, and the subsequent history of the Act under BNP governance confirmed that signal.

The substantive content of the Vested Property Return Act of 2001 was, despite its shortcomings in implementation, genuinely significant as a matter of legislative intention. The Act declared that certain categories of vested properties, those meeting specified criteria relating to the circumstances of their original classification and the eligibility of claimants, were to be returned to their original owners or heirs. It established a tribunal system for adjudicating return claims. It set out a procedure for the preparation of a list of returnable vested properties. And it provided that properties restored to their original owners should be treated as having been continuously in their possession for purposes of adverse possession and other time-related legal doctrines.

8.2 The 180-Day Deadline and Its Emasculation

The 2001 Act originally required the government to prepare within 180 days a comprehensive list of all vested properties that were eligible for return. This 180-day deadline was crucial because without a comprehensive official list, individual claimants would have no way of knowing whether specific properties were classified as vested property eligible for return, and the adjudication process could not function effectively.

The BNP government that came to power immediately after the 2001 elections replaced the 180-day deadline with what was described as an "indefinite period" for the preparation of the list. This amendment, though it might seem like a minor administrative modification, was in substance a suspension of the Act's operation. Without a timeline for the preparation of the return list, the Act became a declaration of intention without a mechanism for implementation. Claimants could not pursue their claims because the prerequisite governmental action, the preparation of the return list, was delayed indefinitely.

This deliberate administrative sabotage of the 2001 Act's implementation mechanism illustrates the point made earlier about bureaucratic interests in the regime's continuation. Even when the political leadership of the country has nominally committed to vested property reform, the implementation depends on a bureaucratic apparatus that has its own interests, relationships, and calculations that may not align with the reforming intention of the political leadership. The BNP government of 2001 to 2006 was led by a party that had not itself endorsed the 2001 Act and whose political base included significant numbers of vested property beneficiaries. In this context, the bureaucratic sabotage of the Act's implementation met no effective resistance from political leadership.

8.3 The Return Act's Substantive Limitations

Even setting aside the implementation failures, the substantive content of the 2001 Act was significantly less generous than a genuine restitution framework would require. The Act limited eligibility for restoration to properties that had been classified as vested before a certain date, excluded properties that had been registered to third parties, and imposed documentation requirements that many claimants were unable to meet because the relevant records had been destroyed, lost, or were in the possession of the very officials who had participated in the original dispossession.

The documentary requirement deserves particular attention. The Act required claimants to produce evidence of their original title to the disputed properties. But the original title documents for many Hindu family properties were either in the possession of revenue offices that had been involved in the original vesting, or had been destroyed during the Liberation War, or had been lost during the decades of displacement. The combination of the original dispossession and the subsequent displacement of Hindu families made it virtually impossible for many legitimate claimants to produce the documentary evidence that the Act required. The Act thus discriminated, in practice, against the most thoroughly dispossessed families, since those who had been most completely driven from their lands and had lost their documents in the process were the least able to benefit from its provisions.

The requirement that restoring property required proof that it had not been transferred to a bona fide third party purchaser was another significant limitation. Many vested properties had been sold by the government to third-party purchasers, and those purchasers had their own interests in resisting restoration. The Act's protection of bona fide purchasers meant that a significant fraction of vested properties were beyond the reach of restoration even in principle. The original Hindu owners of those properties were left without any remedy, compensatory or otherwise, for the state's earlier expropriation.

CHAPTER NINE: THE 2011 AND 2013 AMENDMENTS: HALF MEASURES AND THEIR INADEQUACY

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9.1 The 2011 Amendment: Reopening the Process

The Vested Properties Return Amendment Act of 2011, passed during the second Awami League government of Sheikh Hasina, represented a partial attempt to address the implementation failures of the 2001 Act. The 2011 Amendment established specific timelines for the preparation of return lists and the adjudication of claims by the specialized tribunals. It provided for the appointment of additional tribunal members to address the backlog of claims. And it attempted to address some of the documentary requirements that had blocked many legitimate claims.

The 2011 Amendment represented a genuine, if inadequate, governmental effort to make the 2001 Act functional. The Awami League government, sensitive to Hindu community concerns about its failure to implement the 2001 Act during its first term in opposition and its second term in government from 1996 to 2001, was under political pressure to demonstrate progress on vested property restoration. The 2011 Amendment was the legislative expression of that political pressure.

The results of the 2011 Amendment were mixed. The establishment of specific timelines created some pressure on the administrative machinery to produce return lists. Claims were filed with the tribunals in increased numbers. Some properties were restored to their original owners. But the overall rate of restoration remained deeply inadequate relative to the scale of the problem. The tribunals were overwhelmed with claims. The administrative machinery for preparing return lists remained slow and corruption-prone. Many claims that should have succeeded on their merits failed because of procedural obstacles or deliberate obstruction.

The 2011 Amendment also continued to use the basic framework of the 2001 Act, which, as we have noted, contained significant substantive limitations regarding eligibility criteria and documentary requirements. Improving the implementation of a flawed framework does not address the framework's flaws. The 2011 Amendment made the 2001 Act work better as a machine, but the machine itself was designed to restore only a small fraction of the property that had been wrongly taken.

9.2 The 2013 Amendment and Schedule B

The Vested Properties Return Amendment Act of 2013 introduced an important change in the form of section 28A and the repeal of Schedule B. Schedule B of the 2001 Act had listed specific properties that were excluded from the return regime, properties that the government considered non-returnable for various reasons. The 2013 Amendment repealed Schedule B and provided that properties previously listed in that schedule should be deemed never to have been listed, effectively making them potentially eligible for return.

The 2013 Amendment's repeal of Schedule B was a significant move in principle, since Schedule B had been used to exclude from the return regime many properties that should properly have been eligible. The question was whether the repeal of Schedule B would result in actual restoration of the properties formerly excluded by it, or whether the procedural and practical

obstacles that had frustrated the implementation of the 2001 Act more generally would continue to frustrate the restoration of Schedule B properties as well.

The answer, as subsequent experience demonstrated, was the latter. The repeal of Schedule B removed a formal legal obstacle to restoration but did not address the practical obstacles of documentation requirements, tribunal backlogs, bureaucratic obstruction, and the resistance of third-party occupiers. The properties formerly in Schedule B remained, in the years following the 2013 Amendment, substantially unrestored.

9.3 The Total Failure of Restitution: A Quantitative Assessment

The cumulative result of the 2001 Act, the 2011 Amendment, the 2013 Amendment, and the tribunal system that these laws established has been described by researchers and civil society organizations as a near-total failure of restitution. Various estimates suggest that of the hundreds of thousands of Hindu families affected by the Vested Property regime, only a small fraction have received any meaningful restoration of property. Studies by the Association for Land Reform and Development, the Bangladesh Hindu Buddhist Christian Unity Council, and independent researchers have consistently found that the number of properties actually restored to their original Hindu owners under the 2001 Act framework is a tiny fraction of the number taken.

The Bangladesh Hindu Buddhist Christian Unity Council, which has been one of the most persistent advocates for vested property reform, reported in its documentation for the period 2024 to 2025 that the vested property problem remains overwhelmingly unresolved. Its reports to the Universal Periodic Review process at the United Nations Human Rights Council have consistently highlighted the gap between the legal framework for restoration and the reality of continued Hindu dispossession. The January 2026 statement of the Council's acting general secretary, noting that 82 Hindus were killed and 2,673 separate incidents of atrocity were recorded against the Hindu community between August and November 2024, must be understood in the context of the structural legal vulnerability that the unresolved vested property problem creates.

CHAPTER TEN: JUDICIAL RESPONSES: THE COURTS AND THE VESTED PROPERTY QUESTION

10.1 The High Court Division's Rule Nisi in 2008

On November 6, 2008, the High Court Division of the Supreme Court of Bangladesh issued a Rule Nisi, a form of preliminary judicial order calling for explanation, upon the government in relation to the entire Vested Property legislative framework. The Rule called upon the government to explain why the Enemy Property (Continuance of Emergency Provision) Repeal Act of 1974, the associated provisions of the Arpita Sampatti Prattarpon Ain of 2001, and related

circulars and administrative orders, should not be declared ultra vires the Constitution of Bangladesh.

This judicial action was remarkable. The High Court was essentially asking whether the entire Vested Property legislative framework, from its origins in the 1974 Acts through to the 2001 restoration regime, was constitutionally permissible. The Rule Nisi directed that the government show cause why the relevant laws and orders should not be declared incompatible with the fundamental rights provisions of the Constitution and with the principles established by the Proclamation of Independence of Bangladesh on April 10, 1971.

The Proclamation of Independence had committed the new state of Bangladesh to equality and human dignity. The High Court's intervention suggested that the Vested Property regime was incompatible with these founding commitments, that the state that had proclaimed itself born of a struggle for human rights and dignity could not consistently maintain a legal regime that systematically stripped those rights and that dignity from one religious minority.

The Rule Nisi of 2008 did not immediately produce a definitive judicial resolution of the constitutional questions. The proceedings moved slowly, as judicial proceedings in Bangladesh characteristically do in complex constitutional matters. But the Rule's issuance established an important point: that the Vested Property regime was constitutionally contestable, that courts were willing to consider whether it violated fundamental rights, and that the political failure to reform the regime might ultimately be addressed through constitutional adjudication if the legislature continued to fail.

10.2 Monowara Begum v. Government of Bangladesh: The 2013 Decision

The case of Monowara Begum v. Government of Bangladesh, reported at 65 DLR in 2013, represents an important example of the judicial handling of individual vested property disputes. The Court's reasoning in this case illustrates both the potential of judicial intervention in the vested property context and its limitations.

The Court in Monowara Begum directed the Vested Property Tribunal to dispose of the case afresh, considering all the evidence on record, without making a final determination on the merits of the classification of the property as vested. This procedural direction was valuable in the specific case but did not establish a broader principle that would govern the disposition of vested property claims generally. The Court's reluctance to make more sweeping pronouncements on the constitutional status of the vested property regime reflects a judicial caution that is understandable given the political sensitivity of the issue but that ultimately limits the courts' contribution to the resolution of what is fundamentally a systemic problem.

The pattern of the Bangladeshi courts in vested property matters has been to adjudicate individual cases rather than to engage with the systemic constitutional issues that the regime raises. Courts have generally required that classified vested property disputes proceed through the statutory tribunal system rather than through direct constitutional litigation. This channeling of cases into the statutory system, while defensible as a matter of administrative law, has the

practical effect of limiting the capacity of constitutional arguments to disrupt the operation of the regime as a whole.

10.3 Section 27 and Pre-emption Rights: An Under-Utilized Legal Tool

Section 27 of the Vested Properties Return Act of 2001 confers a right of pre-emption in respect of unclaimed vested property upon co-sharers by inheritance or possessors by lease. This provision, though rarely invoked by Hindu claimants who are often unaware of it or unable to navigate the procedural requirements for exercising it, represents a potentially significant legal tool. The right of pre-emption, if successfully exercised, would allow legitimate heirs of dispossessed Hindu families to acquire vested properties by paying the government an appropriate price, even in cases where outright restoration is not available because the property has been transferred to third parties.

The practical value of section 27 has been severely limited by the same documentation requirements, procedural complexity, and administrative obstruction that have frustrated the implementation of the main restoration provisions of the Act. But it represents a doctrinal resource that a reformed legal framework, with better institutional support for claimants and more effective judicial oversight of the adjudication process, could deploy more effectively.

10.4 Constitutional Litigation Strategy: Prospects and Challenges

The judicial history of the Vested Property regime suggests that constitutional litigation, while not the primary avenue for reform, can play a useful complementary role to legislative and political advocacy. The 2008 Rule Nisi demonstrates that the High Court Division is willing to entertain constitutional challenges to the legislative framework. The challenge for advocates is to develop constitutional arguments that are both legally compelling and practically manageable in the context of Bangladesh's judicial system.

The most powerful constitutional arguments against the Vested Property regime connect to articles 27, 28, and 42 of the Constitution of Bangladesh. Article 27 guarantees equality of all citizens before the law. Article 28 prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. Article 42 guarantees the right to property, providing that no person shall be deprived of property except by authority of law, and that property shall not be compulsorily acquired without compensation. The Vested Property regime violates all three of these provisions in ways that a carefully developed constitutional argument could establish.

The personal law exception that has been invoked to shield various aspects of minority personal law from constitutional challenge, as analyzed in Part Three of this treatise, is not applicable to the Vested Property regime. The Vested Property Acts are not personal law provisions. They are property law provisions of general application. There is no principled basis for exempting them from constitutional scrutiny under articles 27, 28, and 42.

CHAPTER ELEVEN: CONSTITUTIONAL ANALYSIS: THE VESTED PROPERTY REGIME AND BANGLADESH'S FUNDAMENTAL LAW

11.1 The Constitutional Framework and Its Property Guarantees

The Constitution of Bangladesh, in its post-2011 amended form following the Fifteenth Amendment, reinstates secularism as a foundational principle of the state alongside the statement that Islam is the state religion. This apparent tension within the constitutional framework, the simultaneous affirmation of secular principles and of Islam's special status, has generated significant academic debate and some judicial uncertainty. But for the purposes of the vested property analysis, the relevant provisions are clear: the Constitution unambiguously protects equality, non-discrimination, and property rights.

Article 27 of the Constitution provides that all citizens are equal before law and are entitled to equal protection of law. Article 28 provides that the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, or place of birth. Article 42 provides that every citizen shall have the right to acquire, hold, transfer, or otherwise dispose of property, and that no property shall be compulsorily acquired, nationalized, or requisitioned save by or under the authority of law, which makes provision for payment of compensation.

The Vested Property regime violates all three of these articles. It violates article 27 because it treats similarly situated citizens differently based on their religious identity, since it was designed and has operated to affect primarily Hindu citizens. It violates article 28 because the discrimination it effects is discrimination on grounds of religion, the most straightforward case of the prohibited discrimination that article 28 identifies. It violates article 42 because it provides for the compulsory acquisition of property without meaningful compensation, since the vesting of property in the state under the Enemy Property and Vested Property Acts was not accompanied by any payment of market-value compensation to the original owners.

11.2 The Article 12 Commitment to Secularism and Its Implications

The Fifteenth Amendment to the Constitution of Bangladesh, adopted in 2011, restored the original 1972 constitutional commitment to secularism alongside the insertion of "absolute trust and faith in Almighty Allah" as a principle. Article 12 of the Constitution, in its current form, provides for the elimination of communalism in all its forms, prohibits the state from granting political status in favor of any religion, and prohibits the abuse of religion for political purposes.

The Vested Property regime, in its original design and its operational history, is precisely the kind of communal arrangement that article 12 commits the state to eliminating. The regime was designed to operate against the Hindu minority on the basis of their communal identity and their perceived connection to India, the state whose population is predominantly Hindu. Its continuation in any form after the constitutional commitment to the elimination of communalism represents a direct contradiction between constitutional principle and legislative practice.

The argument under article 12, combined with the more specific property and equality arguments under articles 27, 28, and 42, provides a powerful constitutional basis for challenging the Vested Property regime. The argument would be that the regime as a whole, including the 2001 Act's restoration framework insofar as it falls short of genuine restitution, is incompatible with the Constitution and must be replaced with a legislative framework that actually honours the constitutional commitments.

11.3 The Transformative Constitutionalism Framework and Its Application

The theory of transformative constitutionalism, developed initially in the South African context by Karl Klare and subsequently applied across a range of postcolonial legal systems by scholars including Boaventura de Sousa Santos, Upendra Baxi, and in the South Asian context, Ratna Kapur, provides an important theoretical framework for understanding what the constitutional provisions require in the vested property context.

Transformative constitutionalism holds that a constitution committed to equality and human dignity does not merely require the state to refrain from discriminating. It requires the state affirmatively to address and remedy the structural conditions that produce inequality and deny dignity. Under a transformative reading of Bangladesh's constitutional commitments, the state's obligation with respect to the Hindu minority's property situation is not merely to stop adding to the stock of vested properties. It is affirmatively to restore what has been taken, to compensate what cannot be restored, and to reform the legal framework comprehensively enough to ensure that the kind of systematic dispossession that occurred under the Vested Property regime cannot occur again.

This transformative reading has important implications for the reform agenda. A non-transformative reading of the constitutional requirements might be satisfied by a legislative commitment to restore a portion of vested properties according to certain eligibility criteria. A transformative reading requires something more: a comprehensive restitution framework that takes seriously the scale of the historical wrong and that genuinely restores, to the extent possible, the property rights and the economic security of those who were dispossessed.

CHAPTER TWELVE: INTERNATIONAL HUMAN RIGHTS LAW AND THE VESTED PROPERTY REGIME

12.1 Bangladesh's International Human Rights Obligations

Bangladesh is a signatory to several international human rights instruments that are relevant to the Vested Property question. These include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention on the Rights of the Child.

Bangladesh has also signed the UN Declaration on the Rights of Persons Belonging to National, Ethnic, Religious, and Linguistic Minorities.

Each of these instruments contains provisions that bear on the Vested Property regime. The ICCPR's article 26 prohibition on discrimination on grounds of religion is directly applicable. The ICESCR's article 11 right to an adequate standard of living, which includes the right to adequate housing and food, is relevant to the situation of Hindu families dispossessed of their agricultural land. The CERD's prohibition of racial and ethnic discrimination, interpreted by the Committee on the Elimination of Racial Discrimination to cover discrimination on the basis of national or ethnic origin, applies to discrimination based on religious communal identity when that identity tracks ethnic or national-origin lines, as it does in the Hindu community in Bangladesh.

12.2 The CERD Framework and the Concept of Ethnic and Racial Discrimination

The Committee on the Elimination of Racial Discrimination has, in its jurisprudence, consistently interpreted the CERD's prohibition of racial discrimination broadly enough to cover discrimination based on ethnic, national-origin, and in some contexts religious lines. The Hindu community in Bangladesh, which is ethnically Bengali and nationally Bangladeshi but which has been treated as culturally and politically connected to India in ways that have been used to justify their dispossession, is precisely the kind of community whose protection the CERD framework is designed to provide.

The CERD requires states parties to "review governmental, national and local policies, and to amend, rescind, or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists." The Vested Property regime, which has the documented effect of systematic dispossession along communal and effectively ethnic lines, is squarely within the category of laws and regulations that the CERD requires Bangladesh to review and reform.

Bangladesh has appeared before the Committee on the Elimination of Racial Discrimination and has been questioned about the status of the Vested Property regime on multiple occasions. The Committee's concluding observations on Bangladesh's reports have consistently identified the Vested Property issue as a concern and have recommended more effective measures for restoration of dispossessed properties and protection of minority property rights. Bangladesh's responses have generally acknowledged the concern while pointing to the 2001 Act as evidence of legislative action, without acknowledging the substantial implementation failures that have rendered that Act largely ineffective.

12.3 The CEDAW Framework and Gendered Dispossession

The Convention on the Elimination of All Forms of Discrimination Against Women provides a specific framework for analyzing the gendered dimension of the Vested Property regime that we examined in Chapter Seven. CEDAW's article 15 requires state parties to accord women equal rights with men in all matters relating to property, contracts, and civil proceedings. Article 16

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addresses family law and property, requiring equal rights of ownership, management, and disposition of property. Article 14, specifically addressing rural women, requires state parties to ensure that rural women have equal treatment in land and agrarian reform programs.

The Vested Property regime, as applied with particular severity to Hindu women, violates all of these provisions. The regime discriminates against Hindu women through the interaction of personal law provisions that limit their property rights and the vested property framework that exploits those limitations. A comprehensive analysis of Bangladesh's compliance with CEDAW must include an examination of this interaction and of the state's obligation to address it through reform of both the personal law framework and the vested property framework.

The CEDAW Committee, in its General Recommendation 34 on the rights of rural women, specifically addressed the issue of land rights and identified the dispossession of rural women through discriminatory legal mechanisms as a violation of the Convention. The situation of Hindu women in rural Bangladesh, dispossessed through the interaction of Dayabhaga personal law and the Vested Property regime, fits squarely within the factual pattern that General Recommendation 34 identifies as constituting a CEDAW violation.

12.4 The UN Declaration on the Rights of Persons Belonging to Minorities

The UN Declaration on the Rights of Persons Belonging to National, Ethnic, Religious, and Linguistic Minorities, adopted by the General Assembly in 1992, provides an important normative framework for the protection of minority communities. The Declaration's article 1 requires states to protect the existence and the national or ethnic, cultural, religious, and linguistic identity of minorities within their respective territories. Its article 2 provides minorities with the right to enjoy their culture, to profess and practice their religion, and to use their language without interference or any form of discrimination.

The connection between these cultural and religious rights and the property rights affected by the Vested Property regime is direct and significant. The ability of a religious minority to maintain its cultural and religious identity is closely connected to its ability to maintain the economic base that sustains its community life. Hindu communities whose agricultural land has been stripped through the Vested Property regime are communities that have been economically weakened to the point where maintaining their religious and cultural practices becomes extremely difficult. The destruction of Hindu temples, the inability to maintain religious festivals and rituals, and the general cultural impoverishment of dispossessed Hindu communities are all downstream consequences of the economic dispossession that the Vested Property regime has produced.

The Special Rapporteur on Minority Issues of the United Nations Human Rights Council has in recent years addressed the situation of minorities in Bangladesh, including the Hindu minority, in reports that have drawn attention to the structural legal vulnerabilities that the Vested Property regime and related laws create. These international human rights mechanisms provide external pressure for reform that should be deployed more systematically by Hindu community advocates in Bangladesh and their international supporters.

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CHAPTER THIRTEEN: THE 2024-2026 CRISIS AND THE PROPERTY DIMENSION

13.1 The August 2024 Uprising and Its Immediate Property Consequences

The uprising of July and August 2024 that toppled the government of Sheikh Hasina produced immediate and severe consequences for the Hindu minority in Bangladesh, consequences that intersected in complex ways with the unresolved Vested Property question. As documented in detail in the Foreword to this treatise and in earlier parts, the Bangladesh Hindu Buddhist Christian Unity Council recorded more than 2,000 incidents of attack on minority communities in the sixteen days between August 4 and August 20, 2024. These attacks included violence against temples, looting and arson of Hindu homes and businesses, and multiple killings.

The property dimension of these attacks was significant and requires examination in the context of the Vested Property analysis. The pattern of attack and flight that the August 2024 violence produced was identical in structure to the pattern that the Vested Property regime had historically exploited: communal violence drives Hindu families temporarily off their properties, which then become vulnerable to opportunistic occupation and potentially to formal legal classification as abandoned or vested property. In the post-August 2024 period, civil society organizations reported multiple cases in which properties vacated by Hindu families fleeing violence were being claimed or occupied by local actors, in some cases with the evident intention of seeking formal legal recognition of the new occupancy arrangements.

The January 2026 report of the Bangladesh Hindu Buddhist Christian Unity Council, noting 2,673 separate incidents of atrocity between August and November 2024, must be understood against this background. Many of these incidents were not merely religious or physical violence but economic dispossession combined with physical intimidation, using the same combination of social coercion and legal manipulation that has characterized the Vested Property regime throughout its history.

13.2 The Interim Government's Response and Its Limitations

The Interim Government led by Nobel Laureate Muhammad Yunus, which came to power in August 2024, condemned the attacks on minority communities and established mechanisms for investigating and documenting the incidents. It established eleven reform commissions in October 2024, including commissions on constitutional reform, judicial reform, and women's rights. These commissions were asked to make recommendations on comprehensive reform across a range of areas.

The Women's Rights Commission, which reported in April 2025, made recommendations that included reforming inheritance laws to provide equal rights for women. These proposals, which included equal parental rights for women and reforms to inheritance laws, prompted a backlash: nearly 20,000 supporters of the Islamist organization Hefazat-e-Islam rallied in Dhaka to protest the proposed reforms. (Human Rights Watch) This response illustrated the political constraints

on reform even under the reformist Interim Government and made clear that comprehensive legal reform, including reform of vested property law and Hindu personal law, would face serious organized political resistance.

The interim government's human rights reform agenda stalled in significant ways. In July 2025, the Hindu-majority village of Thakurpara in Rangpur faced a communal mob attack destroying fourteen homes. Washingtoncentre Civil society observers noted that despite promises of comprehensive reform, the actual protection of Hindu minority communities remained inadequate. From January to October 2025, 39 attacks targeting minority communities were reported, a steep increase from 22 in 2023 and 12 in 2022. The Diplomat

The Interim Government's handling of the Vested Property question was particularly inadequate. No new legislative initiative on vested property was tabled during the interim period. The existing restoration tribunals continued to function with their characteristic slowness and corruption. The widening difference between promises and realization characterized the interim government's tenure as it prepared Bangladesh for the February 2026 elections. Washingtoncentre

13.3 The February 2026 Elections and the New BNP Government

The February 2026 elections, in which the Bangladesh Nationalist Party secured a two-thirds supermajority, produced a new political context for the Vested Property question. The BNP had made various commitments to minority protection during its campaign, motivated in part by the desire to secure Hindu votes in the absence of its main rival, the Awami League, which was barred from the elections. Rahman's ascension sparked hope among Bangladesh's minority Hindu community, which had faced relentless attacks during the interim regime. After the Awami League was banned from contesting the 2026 elections, the BNP stepped in to fill the void with pledges to protect minorities. (Prokerala)

However, the BNP's past treatment of minority communities continues to be a source of controversy. In 1977, the BNP's founder Ziaur Rahman was responsible for removing the word secularism from the Constitution, and party members have repeatedly been associated with violence against the country's Hindu minority. (Prokerala) More directly relevant to the Vested Property analysis, it was the BNP government of 2001 to 2006 that most comprehensively sabotaged the implementation of the Vested Property Return Act.

Despite the BNP's previous poor record on secularism and minority protection, Hindus voted overwhelmingly for the party, considering it the only viable alternative following the ban on the Awami League. (Prokerala) This voting pattern illustrates the extraordinary political vulnerability of the Hindu minority: they cannot withhold their votes in protest because there is no alternative that would be more responsive to their concerns. Their electoral behavior is determined by the least-bad option rather than by genuine political representation of their interests.

While the Bangladesh Prime Minister has pledged to restore law and order and guarantee equal rights for all religious groups, he has remained notably silent on the painful legacy of property seizures targeting primarily Hindus. (Prokerala) This silence, in the new government's early days in office, does not augur well for meaningful Vested Property reform in the immediate future.

13.4 The July Charter of 2025 and Constitutional Reform Prospects

The July Charter of 2025, signed by 33 political parties after a lengthy consultative process, and subsequently endorsed by 61% of voters in the February 2026 constitutional referendum, represents Bangladesh's most recent attempt at comprehensive constitutional reform. The Charter addresses a range of constitutional issues including the structure of government, fundamental rights, and institutional accountability. Its relevance to the Vested Property question lies in its treatment of fundamental rights and the protection of minorities.

The constitutional referendum that accompanied the February 2026 elections endorsed the reform package. The Bangladesh Nationalist Party secured a two-thirds supermajority and 61% of voters endorsed the reform package, though the referendum's ambiguously framed questions left unclear which specific proposals were actually approved and what binding force they carry. (ConstitutionNet)

Civil society organizations and minority community advocates have expressed concern that the constitutional reform process has not adequately addressed the structural legal vulnerabilities of religious minorities, including the Vested Property question. If the new constitutional framework, whatever its precise form, does not include stronger guarantees for minority property rights, the opportunity presented by the 2024 to 2026 reform moment will have been largely wasted from the perspective of the Hindu community.

CHAPTER FOURTEEN: JURISPRUDENTIAL AND PHILOSOPHICAL ANALYSIS OF THE VESTED PROPERTY REGIME

14.1 Property Rights and Justice: The Rawlsian Framework

John Rawls's theory of justice, developed in A Theory of Justice (1971) and subsequently elaborated in Political Liberalism (1993) and The Law of Peoples (2001), provides a useful starting point for the philosophical analysis of the Vested Property regime. Rawls's theory holds that the basic structure of a society, the fundamental institutions that distribute rights, duties, and benefits among its members, must be governed by principles of justice that rational persons would choose under conditions of fairness, behind a "veil of ignorance" that prevents them from knowing their own position in the social hierarchy.

From behind a Rawlsian veil of ignorance, where one did not know whether one would be a Muslim majority member or a Hindu minority member in Bangladesh, what principles would one choose to govern the distribution of property rights? The answer is clearly not the Vested

Property regime. No rational person who did not know their religious identity would choose a system in which property rights are made systematically insecure for persons of one religious community while being secure for persons of another. The Vested Property regime fails the Rawlsian test of justice comprehensively.

Rawls's Difference Principle, which allows inequalities only if they benefit the least advantaged members of society, provides additional analytical purchase. The beneficiaries of the Vested Property regime are not the least advantaged. They are politically connected individuals who have used the legal system to acquire property at below-market prices. The Hindu families dispossessed by the regime are among the most economically vulnerable members of Bangladesh's society. The Vested Property regime produces an inequality that moves resources from the less advantaged to the more advantaged, the precise opposite of what the Difference Principle requires.

14.2 Communutative Justice and the Obligation of Restitution

The philosophical tradition of commutative justice, which concerns what is owed between individuals or between individuals and the state as a matter of corrective right, provides a framework for thinking about the obligation of restitution that the Vested Property regime creates. Aristotle's analysis of corrective justice in the Nicomachean Ethics established the principle that when one party has wrongfully benefited at the expense of another, justice requires that the gain be restored to the party who suffered the loss, restoring the equality that existed before the wrong.

The Vested Property regime represents an enormous wrong, involving the state as the primary wrongdoer, acting at the expense of a religious minority. The wrong is not merely historical. It continues to operate today in the form of the unrestored property rights of Hindu families and in the form of the continuing vulnerability that the unresolved legal status of formerly vested properties creates. The obligation of corrective justice falls primarily on the state of Bangladesh, which inherited both the benefits of the property expropriation and the institutional apparatus through which it was carried out.

The obligation of corrective justice encompasses several dimensions. It encompasses the obligation to restore, to the extent possible, the specific property that was wrongfully taken. It encompasses the obligation to compensate, where restoration is not possible because the property has been transferred to bona fide third parties, for the value of the property taken. It encompasses the obligation to reform, to change the legal framework so that the same wrong cannot be repeated. And it encompasses the obligation to acknowledge, to formally recognize that a serious injustice was committed, which is important both for the dignity of the victims and for the civic health of the nation.

None of these dimensions of the corrective justice obligation has been meaningfully addressed by the Bangladeshi state. The restoration framework of the 2001 Act and its amendments is deeply inadequate as a vehicle for restoration. No compensation framework has been established. The fundamental reform of the legal framework that would prevent recurrence has not been

undertaken. And no formal acknowledgment of the historical wrong has been made by the Bangladeshi state.

14.3 Sen's Capability Approach and the Property Dimension

Amartya Sen's capability approach, developed in its most comprehensive form in Development as Freedom (1999) and subsequent works, provides another powerful philosophical lens through which to analyze the Vested Property regime. The capability approach holds that the fundamental measure of justice in a society is whether its members have the real freedom, the genuine capability, to live lives they have reason to value. These capabilities include bodily integrity, access to adequate nutrition and shelter, the ability to participate in political life, the ability to live with dignity, and the practical conditions that make these other capabilities possible.

The deprivation of agricultural land through the Vested Property regime directly impacts several of the basic capabilities that Sen identifies as fundamental. The capability to live in adequate conditions, to have access to food and shelter, is directly undermined by the loss of agricultural land that was the primary economic resource of many dispossessed Hindu families. The capability to participate in political life on equal terms, to be a genuine political agent rather than a supplicant, is undermined by the economic marginalization that follows property dispossession. The capability to live with dignity, to be recognized as a full member of the society, is directly violated by a legal regime that treats persons' property as subject to expropriation on the basis of their religious identity.

Martha Nussbaum's development of the capability approach in Creating Capabilities (2011) and her analysis of gender and justice in Women and Human Development (2000) are particularly relevant to the gendered dimension of the Vested Property problem. Nussbaum's analysis of how the intersection of economic vulnerability and social subordination creates "compound deprivations" in which multiple disadvantages reinforce each other resonates directly with the situation of Hindu women in Bangladesh, who face the compound deprivation of the Dayabhaga personal law's limitation of their property rights, the Vested Property regime's exploitation of those limitations, and the social vulnerability that both legal disadvantages both reflect and reinforce.

14.4 Postcolonial Jurisprudence and the Question of Historical Responsibility

The Vested Property regime is, as we have traced in this Part, a product of colonial and postcolonial legal history. Its origins lie in the colonial property law framework, its immediate form was given by the Pakistani state, and its continuation was a choice made by successive governments of independent Bangladesh. The question of who bears historical responsibility for this regime, and what the implications of that responsibility are for the current reform agenda, is complex and demands careful analysis.

Postcolonial jurisprudence, as developed by Upendra Baxi, Ratna Kapur, and in the specific South Asian context by scholars including Rohini Hensman and Partha Chatterjee, consistently

emphasizes that the colonial legacy is not simply something that happened in the past but something that continues to shape legal and institutional structures in the present. The Vested Property regime is a clear illustration of this continuity. The conceptual framework of enemy property, the bureaucratic machinery of property classification and administration, and the political economy of beneficiary interests that perpetuates the regime all have roots in colonial and Pakistani-era legal history.

But postcolonial jurisprudence also insists that the independent states that inherited colonial legal structures made choices about what to maintain, what to reform, and what to create anew. Bangladesh's independent governments made choices that perpetuated and in some respects deepened the Vested Property regime. These were not simply inherited constraints. They were political decisions that reflected calculations of interest and ideology. The postcolonial analysis does not reduce to assigning blame solely to the colonial period but to understanding the historical formation of legal structures while holding independent states accountable for the choices they have made since independence.

CHAPTER FIFTEEN: COMPARATIVE ANALYSIS: INDIA'S EVACUEE PROPERTY LAWS AND THEIR DIFFERENT TRAJECTORY

15.1 The Indian Evacuee Property Framework

India, like Pakistan and subsequently Bangladesh, developed a legal framework for dealing with the properties of persons who moved between the newly divided territories following Partition. The Indian framework, however, took a different trajectory from the Pakistani and Bangladeshi frameworks in ways that illuminate both the specific choices made in each context and the alternatives that were available.

The Administration of Evacuee Property Act of India 1950, the central legislation governing evacuee property on the Indian side of the Partition, was designed primarily to deal with the properties of Muslims who had migrated from India to Pakistan. It established a custodianship framework similar in structure to the Pakistani Enemy Property Acts. The Indian government took custody of evacuee properties with the nominal intention of eventual restoration or disposition in accordance with established legal principles.

The crucial difference between the Indian and Pakistani trajectories was in how the respective states used their legislative and administrative powers over evacuee properties over time. In India, the evacuee property framework was progressively wound down as the immediate post-Partition crisis receded. The Displaced Persons (Compensation and Rehabilitation) Act of 1954 established a framework for providing compensation to persons who had lost property in what became Pakistan. The overall direction of Indian policy was toward closure of the evacuee property question, even if that closure was imperfect and left many displaced persons inadequately compensated.

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15.2 The Nehru-Liaquat Pact and Its Significance

The Nehru-Liaquat Pact of April 1950, signed between Prime Ministers Jawaharlal Nehru of India and Liaquat Ali Khan of Pakistan, was a bilateral agreement intended to address the crisis of communal migration and its property consequences. The Pact committed both governments to protecting the lives, property, and personal honor of minorities on both sides of the border, to guaranteeing their right to own and manage property, and to undertaking not to permit seizures of minority property.

The Nehru-Liaquat Pact was imperfectly implemented on both sides. But its very existence signaled a framework of international commitment to minority property protection that the subsequent Enemy Property Act of 1965 directly violated. The Enemy Property Act's classification of Hindu property owners as enemies on the basis of their religious identity and their connections to India was incompatible with Pakistan's commitments under the 1950 Pact, even allowing for the argument that the 1965 war had changed the context.

The significance of the Nehru-Liaquat Pact for Bangladesh's reform agenda lies in its demonstration that alternatives were available and had been acknowledged at the highest political levels. Bangladesh, as the successor state to East Pakistan, can be argued to have inherited not only the legal instruments of the Vested Property regime but also the obligations that Pakistan undertook under the 1950 Pact. The international law argument that Bangladesh is bound by these obligations, while technically complex given the process of state succession, is substantively compelling: Bangladesh cannot claim the benefits of being a successor state to Pakistan while denying the obligations.

15.3 West Bengal's Approach to Displaced Hindu Property

The situation in West Bengal, which is the closest Indian parallel to Bangladesh in terms of the Hindu-majority Bengali population and the history of Partition migration, provides a useful comparative reference point. West Bengal received large numbers of Hindu refugees from East Pakistan and subsequently from Bangladesh, particularly in 1947, 1950, 1964, 1971, and in smaller numbers subsequently. The Indian government's handling of property displaced by this migration, while imperfect and generating significant political controversy in West Bengal, was substantially different from the approach taken by Pakistan and Bangladesh.

West Bengal did not enact an analogue to the Enemy Property or Vested Property Acts. The properties of Muslims who migrated from West Bengal to East Pakistan were treated under the general evacuee property framework, which was designed to be temporary rather than permanent and which was oriented toward eventual disposition rather than indefinite state ownership. The contrast with the Bangladeshi approach, in which the state permanently acquired the properties of Hindu migrants and made no serious effort at restoration for decades, could not be more stark.

The West Bengal comparison is particularly instructive because it demonstrates that a society facing the same historical circumstances, post-Partition migration, communal demographic change, and the legal complications of abandoned minority property, can make very different

choices about whether to use that situation as an opportunity for redistribution at the expense of a religious minority or to address it through frameworks oriented toward justice and eventual resolution. The choice made in West Bengal was not perfect, but it was fundamentally different in orientation from the choice made in East Pakistan and Bangladesh.

15.4 Nepal's Civil Code Approach and Its Relevance

Nepal's National Civil Code of 2017, which we have examined in other parts of this treatise in the context of personal law reform, is relevant to the Vested Property analysis in a less direct but still significant way. Nepal's comprehensive codification of civil law, including property law, reflects an approach in which property rights are defined, protected, and regulated through a coherent statutory framework that does not discriminate on the basis of religious identity. While Nepal faces its own challenges of minority protection, its statutory approach to property law provides a model for what a comprehensive, non-discriminatory property law framework might look like in a society with religious and cultural diversity comparable to Bangladesh's.

The Nepal model suggests that the path forward for Bangladesh is not the targeted reform of the specific Vested Property legislation in isolation but a more comprehensive rethinking of the statutory framework for property law that ensures that property rights are defined and protected in a manner that is genuinely equal across religious communities. This comprehensive approach, which addresses both the specific legacy of the Vested Property regime and the broader structural inadequacies of the property law framework, is what this Part's reform proposals, developed in the final chapter, aim to outline.

CHAPTER SIXTEEN: COMPREHENSIVE REFORM PROPOSALS: A HINDU PROPERTY SECURITY AND RESTITUTION ACT FOR BANGLADESH

16.1 The Principles of Reform: Starting from Justice

The reform of the Vested Property regime in Bangladesh must begin from a clear statement of principles, because without clear principles the reform process will inevitably be captured by the political economy of the status quo and will produce, as has happened repeatedly in the past, inadequate half-measures that nominally address the problem while leaving its substance intact.

The following principles should guide a comprehensive reform framework:

The first principle is completeness. The reform must address the entire scope of the problem, not merely its most visible or politically convenient aspects. Partial reforms that restore some properties while leaving others unaddressed, or that establish restoration rights while providing inadequate implementation mechanisms, are worse than complete inaction in some respects, since they provide the appearance of reform without its substance and thereby reduce the political pressure for genuine action.

The second principle is retroactivity. The reform must address the historical wrong, not merely prevent future wrongs. A prospective prohibition on new vested property classifications, while necessary, is not sufficient. The families that have been dispossessed over the past six decades, and whose descendants continue to live with the consequences of that dispossession, are owed a remedy that addresses the historical injustice rather than merely preventing its repetition.

The third principle is adequacy. The remedy must be adequate to the wrong. For properties that can be restored, restoration should be the primary remedy. For properties that cannot be restored because they have been transferred to bona fide third parties and are now in use by persons who acquired them without direct participation in the original wrong, fair compensation at current market value should be provided. The standard of adequacy should be determined by reference to the actual loss suffered, not by reference to what is politically convenient to provide.

The fourth principle is efficiency. The implementation mechanism must be designed to work. This means clear procedures, adequate resources, strict timelines, effective judicial oversight, and institutional arrangements that minimize corruption. The history of the 2001 Act demonstrates that a restoration framework that exists on paper but fails in implementation is not a genuine remedy.

The fifth principle is gender sensitivity. The reform must pay specific attention to the gendered dimensions of the Vested Property problem. This means ensuring that the restoration framework is accessible to Hindu women, including widows, who may face particular challenges in documenting their claims under the current legal framework. It also means considering whether additional measures, beyond the restoration of vested property, are needed to address the compounding effects of personal law's limitations on women's property rights and the Vested Property regime's exploitation of those limitations.

The sixth principle is non-recurrence. The reform must include provisions that prevent the recurrence of the kind of systematic minority property dispossession that the Vested Property regime represented. This means not merely repealing the Vested Property Acts but replacing them with a positive framework for the protection of minority property rights that makes it politically and legally very difficult for future governments to recreate a discriminatory property regime.

16.2 The Proposed Hindu Property Security and Restitution Act: Core Provisions

Drawing on the foregoing analysis and on the comparative experience of India, Nepal, and other jurisdictions that have addressed historical minority property injustices, the following outline presents the core provisions of what a comprehensive Hindu Property Security and Restitution Act for Bangladesh should contain.

Part One of the proposed Act should deal with preliminary provisions. The Act should contain a preamble that explicitly acknowledges the historical wrong represented by the Enemy Property and Vested Property regimes, that recognizes the obligation of the state to provide genuine restitution, and that commits the state to ensuring that minority property rights will be protected

on equal terms with those of all other citizens. This acknowledgment and commitment should be given a prominence in the Act that signals clearly that what follows is not a technical administrative measure but a genuine reckoning with a serious historical injustice.

The definitions section of the Act should include a broad and inclusive definition of "dispossessed person," encompassing not only those whose property was formally classified as vested property but also those whose property was effectively taken through the combination of communal pressure and legal manipulation that characterizes the non-formal dimensions of the Vested Property regime. The definition should also include the descendants of original dispossessed persons, recognizing that the intergenerational consequences of dispossession are themselves part of the historical wrong that requires remedy.

Part Two of the proposed Act should establish a Restitution Authority, a specialized body with sufficient independence, resources, and expertise to adjudicate restoration claims effectively. The Restitution Authority should be distinct from the ordinary revenue administration, which has a demonstrated conflict of interest in the adjudication of restoration claims. It should be composed of legally trained members, with representation of Hindu community organizations on its advisory panels, and should be subject to judicial review by the High Court Division.

The Restitution Authority should have the power to initiate restitution proceedings on its own motion, not merely in response to individual claims. This office of its own motion power is essential because many dispossessed families, particularly those who have emigrated to India, may not be in a position to actively pursue claims, and waiting for individual claims to be filed will leave large numbers of dispossessions unaddressed.

Part Three of the proposed Act should establish the substantive rules governing restoration. Restoration should be the primary remedy, available wherever the specific parcel of land or other property taken has not been transferred to a bona fide third party purchaser. The concept of bona fide purchaser should be defined strictly: a purchaser who acquired vested property from the state at below-market price, with knowledge or constructive knowledge of its history as seized minority property, should not be treated as a bona fide purchaser entitled to defeat a restoration claim. The standard for what constitutes constructive knowledge should be set at a level that captures the majority of cases where vested property was sold by the government to politically connected beneficiaries who were aware of its origins.

Where restoration is not available because the property has been transferred to a genuinely bona fide third party, the Restitution Authority should calculate and award compensation at the current market value of the property, not at the historical value at the time of dispossession. This is required by the principle of adequacy: compensation at historical value would be grossly inadequate given the enormous inflation in land values that has occurred in Bangladesh over the past six decades. The state should fund the compensation regime through a dedicated Minority Restitution Fund, financed by a combination of general revenue appropriations and levies on land transactions that relate to the vested property portfolio.

Part Four of the proposed Act should address the reform of the ongoing legal framework to prevent recurrence. This should include the outright repeal of all remaining provisions of the Enemy Property and Vested Property Acts that have not already been repealed, including any provisions that continue to give the state powers over the properties of non-residents that are not available in respect of the properties of ordinary citizens. It should include the amendment of the Land Registration Acts to require that any land transaction involving property that was at any point classified as vested property be disclosed to the buyer and be subject to the buyer's acknowledgment of the historical claim against that property. It should include the creation of new criminal offenses for government officials who fraudulently classify Hindu-owned property as vested or who obstruct the implementation of the restoration framework.

Part Five of the proposed Act should address the gendered dimensions of the restitution framework. It should provide that Hindu women, including widows, shall have the same right to file restitution claims as male family members, notwithstanding any provision of Hindu personal law that might limit their interest in the relevant property. In this respect, the Restitution Act should expressly override any conflicting provision of Hindu personal law that would result in a woman's claim being treated as subordinate to that of a male relative. The principle that the restitution framework will not be defeated by the same personal law provisions that made women's property rights vulnerable in the first place is essential to the integrity of the reform.

16.3 The Relationship Between Property Reform and Personal Law Reform

The reform of the Vested Property regime cannot and should not be treated as a standalone legislative project. As the analysis throughout this Part has demonstrated, the Vested Property regime's effectiveness as an instrument of Hindu dispossession depended substantially on the vulnerabilities created by Hindu personal law, particularly the limitations on women's property rights under the Dayabhaga system. A comprehensive reform program must address both the vested property framework and the personal law framework simultaneously.

The Hindu Succession Act reforms proposed in Part Three of this treatise, the Hindu Maintenance and Economic Security Act proposed in Part Eight, and the Hindu Property Security and Restitution Act proposed in this Chapter together form a trilogy of property-related reforms that must be enacted together if each is to achieve its intended purpose. The Succession reforms would give Hindu women full inheritance rights, eliminating the limitation of the widow's estate and the daughter's subordinate position in the Dayabhaga succession hierarchy. The Maintenance reforms would provide economic security to Hindu women who are financially dependent on male family members. And the Restitution reforms would address the specific legacy of the Vested Property regime while establishing a permanent framework for minority property security.

Each of these three reforms reinforces the others. Succession reforms are more effective when the property that women inherit is secure from expropriation through the Vested Property mechanism. Vested Property restitution is more effective when women's personal law rights in the property they hold are clear, codified, and legally robust enough to support their restoration

claims. Maintenance reforms are less urgently needed when women have genuine inheritance rights that provide them with economic security independently of male family members.

16.4 The Political Path to Reform: Strategy and Advocacy

The political obstacles to comprehensive Vested Property reform in Bangladesh are formidable. As the analysis in this Part has demonstrated, the regime has generated a self-sustaining coalition of beneficiaries that cuts across party lines and has consistently been able to frustrate genuine reform. Understanding these obstacles is essential to developing an effective political strategy for overcoming them.

The most promising immediate avenue is the combination of constitutional litigation and international human rights advocacy. The 2008 Rule Nisi of the High Court Division, which questioned the constitutional compatibility of the entire Vested Property legislative framework, remains pending and should be vigorously pursued. A constitutional challenge that successfully establishes the regime's incompatibility with articles 27, 28, and 42 of the Constitution would create a judicial mandate for reform that could not be ignored, even by governments that are politically reluctant to act.

International human rights advocacy through the Universal Periodic Review, the CERD Committee, the CEDAW Committee, and the Special Rapporteur on Minority Issues provides another avenue for sustained pressure on successive Bangladeshi governments. The documentation of Bangladesh's failure to implement its international obligations with respect to minority property rights, and the consistent engagement of international human rights bodies on this issue, creates both reputational pressure on the government and a normative framework that supports the constitutional litigation arguments.

Civil society advocacy within Bangladesh, led by the Bangladesh Hindu Buddhist Christian Unity Council, the Association for Land Reform and Development, and allied organizations, must be sustained and expanded. The experience of the 2001 Act demonstrates that without sustained civil society pressure, legislative reforms that are enacted in response to electoral calculations are not implemented. The civil society movement must maintain pressure not merely for legislative enactment but for genuine implementation, which requires ongoing monitoring of the Restitution Authority's work and public reporting on its progress.

The engagement of the Hindu community's diaspora organizations, particularly those based in India, the United Kingdom, and North America, can provide important resources for advocacy, research, and documentation. The international Hindu community has a stake in the treatment of Hindus in Bangladesh, and diaspora organizations can play a valuable role in maintaining international attention on the Vested Property issue and in supporting the work of civil society organizations within Bangladesh.

The most significant long-term political resource for reform, however, is the growing recognition within Bangladesh's mainstream political culture that the demographic decline of the Hindu minority is itself a national problem. A Bangladesh that continues to lose its Hindu minority

through the combined effects of violence, legal discrimination, and property dispossession is a Bangladesh that is becoming more religiously homogeneous and less capable of demonstrating to itself and to the world that it can maintain a pluralistic society. The argument that genuine minority protection is in Bangladesh's national interest, not merely in the interest of the minority itself, is an argument that can be made in a politically mainstream register and that can build coalitions for reform that go beyond the minority community itself.

CONCLUSION TO PART NINE

The Vested Property regime is the single most consequential legal instrument in the systematic reduction of Bangladesh's Hindu minority population from approximately thirty percent to approximately eight percent of the total. It is a regime whose origins lie in the Enemy Property laws of Pakistani rule, whose continuation in independent Bangladesh reflects choices made by successive governments that prioritized the political economy of beneficiary interests over the constitutional and moral demands of justice, and whose consequences extend across six decades of dispossession, demographic displacement, and the compounding vulnerability that the interaction of vested property law and Hindu personal law creates.

This Part has analyzed that regime from multiple angles: its historical formation, its doctrinal architecture, its political economy, its gendered dimensions, its constitutional illegitimacy, its incompatibility with international human rights law, and its contemporary manifestations in the post-August 2024 crisis. It has argued that genuine reform requires a comprehensive Hindu Property Security and Restitution Act that addresses the historical wrong of dispossession through a robust restoration and compensation framework, reforms the ongoing legal architecture to prevent recurrence, and pays specific attention to the gendered dimensions of the problem.

The reform of the Vested Property regime is not, in the final analysis, merely a legal or technical problem. It is a test of whether Bangladesh can become the kind of state that its founding documents promised it would be: a state committed to the equal citizenship of all its people regardless of their religion, a state that acknowledges rather than perpetuates the injustices of its history, and a state whose institutions are capable of responding to the demands of justice even when doing so requires confronting powerful interests that benefit from injustice. That test has been failed repeatedly over the past five decades. The analysis provided in this Part aims to contribute to making it possible for future governments to pass it.

The connection between the Vested Property regime and the broader project of Hindu law reform that this treatise examines is fundamental. Just as the personal law reform agenda we have examined in preceding parts is inseparable from the constitutional and human rights framework that gives it its urgency, the Vested Property reform agenda is inseparable from the personal law reform agenda. The two projects share the same philosophical foundations, the same constitutional commitments, and the same political challenges. They will succeed together or fail together. It is this fundamental unity of the Hindu law reform enterprise that the subsequent parts of this treatise will continue to develop and elaborate.

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Part Nine of this treatise concludes here. Part Ten will examine the intersection of Hindu law and constitutional reform in Bangladesh, analyzing the opportunities and constraints that the February 2026 constitutional changes present for the comprehensive reform of Hindu personal law and its institutional framework.

PART TEN

The Constitution, Transformative Jurisprudence, and the Imperative of Hindu Law Reform: Constitutional Foundations, the Equality Framework, the Personal Law Exception, the July Charter of 2025, and the Path to a Reformed Hindu Code Through Bangladesh's Evolving Constitutional Order

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FOREWORD TO PART TEN

Every claim for Hindu law reform in Bangladesh must ultimately stand or fall in the constitutional arena. The personal law of religious communities, wherever it is maintained as a distinct domain within a larger legal order, exists in perpetual tension with the constitutional commitments of that order to equality, dignity, and non-discrimination. That tension, in the Bangladeshi context, is not merely an academic puzzle. It is the central jurisprudential crisis of Hindu personal law: the same state that guarantees equal protection of the law to all its citizens maintains, for thirteen million of those citizens, a system of rules governing their most intimate personal affairs that denies them the equality the constitution promises.

This Part undertakes the most systematic and comprehensive examination available in the academic literature of the constitutional dimensions of Hindu law reform in Bangladesh. It proceeds through several interlocking lines of analysis. It examines the historical formation of Bangladesh's constitutional framework, tracing the oscillations between secular and Islamic foundational principles that have shaped the constitution's character from 1972 to the present. It analyzes in depth the fundamental rights provisions of the Constitution and their application to the domain of personal law. It examines the concept of the personal law exception, the legal doctrine that has historically shielded religious personal law from constitutional challenge, and it argues that this exception is both doctrinally weak and constitutionally unjustifiable when subjected to rigorous analysis. It develops the theory of transformative constitutionalism as the appropriate jurisprudential framework for understanding what the Constitution requires in relation to Hindu personal law. It examines the July Charter of 2025 and the February 2026 constitutional referendum in detail, analyzing what these developments mean for the Hindu law

reform agenda. And it develops a strategy for constitutional litigation and legislative advocacy that takes full advantage of the constitutional resources available to the reform movement.

Throughout, this Part draws on the rich comparative jurisprudence of India, South Africa, Nepal, and other jurisdictions that have grappled with the tension between religious personal law and constitutional equality, and on the most recent scholarship in transformative constitutionalism, feminist legal theory, postcolonial jurisprudence, and minority rights theory.

CHAPTER ONE: THE CONSTITUTION OF BANGLADESH AS A LIVING DOCUMENT: HISTORICAL FORMATION AND CHARACTER

1.1 The 1972 Constitution and Its Founding Vision

The Constitution of Bangladesh, adopted on November 4, 1972, less than a year after independence, was drafted with extraordinary speed under conditions of post-war reconstruction and political urgency. Its principal drafter, Dr. Kamal Hossain, a distinguished jurist who had served as one of Sheikh Mujibur Rahman's closest constitutional advisers, drew on multiple constitutional traditions, the Westminster parliamentary model inherited from British India, the Indian constitutional framework, and certain international human rights instruments, to produce a document of considerable intellectual ambition.

The 1972 Constitution was founded on four principles that were declared the fundamental principles of state policy: nationalism, socialism, democracy, and secularism. These four principles, incorporated in Articles 8 through 12 of the original Constitution, represented a specific vision of the Bangladeshi state as secular, democratic, and committed to a form of social equality. For the Hindu minority, the secularism principle was of obvious and immediate importance. A secular state, understood in the sense that the original framers intended, was a state that would not privilege any religion in its law and governance, a state in which Hindu citizens would stand on equal legal footing with their Muslim fellow citizens regardless of the religious traditions to which they belonged.

Article 12 of the original Constitution operationalized the secularism principle. It provided that the principle of secularism should be realized through, among other things, the elimination of communalism in all its forms, the prohibition of the abuse of religion for political purposes, and the elimination of any discrimination against, or persecution of, persons professing any particular religion. This was, at least on paper, a strong commitment to the equal treatment of religious minorities. The question that subsequent history would answer in the negative was whether this paper commitment would be matched by actual legislative and administrative action to reform the discriminatory legal arrangements that Hindu citizens lived under.

The 1972 Constitution's treatment of fundamental rights was similarly ambitious. Part III of the Constitution, Articles 26 through 47, set out a comprehensive catalogue of fundamental rights including equality before law (Article 27), prohibition of discrimination on grounds of religion,

race, caste, sex, or place of birth (Article 28), and the right to protection of law (Article 31). Article 42 guaranteed the right to property. Article 44 made these fundamental rights enforceable through the High Court Division by way of directions or orders including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, and certiorari.

The significance of these provisions for the Hindu law reform agenda should have been immediately apparent. A constitution that prohibited discrimination on grounds of religion and guaranteed equality before the law was a constitution that, if taken seriously, demanded the reform of a personal law system that applied unequal and discriminatory rules to Hindu citizens in the domains of marriage, succession, adoption, and maintenance. The framers of the 1972 Constitution appeared to recognize this implication, since the ambition of the founding documents pointed clearly toward the kind of comprehensive legislative reform of Hindu personal law that India had undertaken in the 1950s.

That recognition was not, however, translated into legislative action. The foundational generation of Bangladeshi governance, for the reasons analyzed in preceding parts of this treatise, chose not to prioritize Hindu law reform. The secular constitution was enacted alongside a Hindu personal law that remained frozen in pre-independence form. This is the fundamental contradiction at the heart of Bangladesh's constitutional relationship with its Hindu minority: the Constitution promises equality while the legal system governing the most intimate aspects of Hindu life denies it.

1.2 The Constitutional Amendments: From Secular to Islamic Foundations

The 1972 Constitution's secular framework did not survive intact. A series of constitutional amendments progressively modified, diluted, and at points inverted the foundational commitments of the original document, producing a constitutional text that is now marked by internal tensions between its secular heritage and its subsequent Islamization.

The Fourth Amendment of 1975, enacted under Sheikh Mujibur Rahman's one-party BAKSAL government in the final months before his assassination, established a presidential system and concentrated power in the executive. While it did not directly modify the secularism provisions, it set a precedent for using constitutional amendment as an instrument of governance by fiat rather than by genuine constitutional consensus.

The most constitutionally significant change for the purposes of Hindu law analysis came through the Fifth Amendment of 1979, which was enacted by military government to ratify the constitutional changes made by the martial law regime of Ziaur Rahman. Among these changes was the replacement of "secularism" with "absolute trust and faith in Almighty Allah" as a foundational principle. The Bismillahir Rahmanir Rahim was added to the preamble. The commitment to secularism that had been a core feature of the 1972 Constitution was effectively repudiated.

The Eighth Amendment of 1988, enacted under the military government of Hussain Muhammad Ershad, went further by inserting Article 2A, which declared that "the state religion of the

Republic is Islam." This amendment represented the most direct formal contradiction of the 1972 Constitution's secular character. A state that has an official religion is, at least in some formal sense, not a secular state in the way that the 1972 framers understood secularism. The practical implications of Article 2A for the legal status of religious minorities, including Hindus, have been debated since its adoption, but the symbolic message was unmistakable: Bangladesh had formally, at the constitutional level, defined itself as an Islamic state, however qualified that definition might be.

The Twelfth Amendment of 1991 restored the parliamentary system of government. The Thirteenth Amendment of 1996 established the caretaker government system. The Fifteenth Amendment of 2011, enacted by the Awami League government of Sheikh Hasina, was the most comprehensive constitutional revision since the original 1972 document. It restored secularism as a foundational principle of the state in the preamble and Article 12, while simultaneously retaining Article 2A's declaration that Islam is the state religion. This internally contradictory constitutional arrangement, a simultaneously secular and Islamic state, is the framework that Bangladesh's courts and legislators have been navigating ever since.

The Fifteenth Amendment also made the fundamental rights provisions somewhat more extensive and more explicitly connected to international human rights standards. Its amendments to Part III of the Constitution expanded the catalogue of protected rights in ways that are relevant to the Hindu law reform analysis.

1.3 The Sixteenth Amendment and the Judicial Independence Crisis

The Sixteenth Amendment of 2014, which transferred the power to remove Supreme Court judges from the Supreme Judicial Council to the Parliament, became the subject of a major constitutional controversy. The Supreme Court ultimately struck down the Sixteenth Amendment as unconstitutional in 2017, holding that it violated the independence of the judiciary, which is a basic structure of the Constitution that cannot be amended.

This case, the Sixteenth Amendment case decided by the Appellate Division, is significant for the Hindu law reform analysis for two reasons. First, it demonstrates that the Supreme Court of Bangladesh is capable of invalidating constitutional amendments on basic structure grounds, a doctrine that was imported from Indian constitutional law and that significantly expands the scope of judicial review in Bangladesh. Second, it demonstrates that the court is capable of asserting its institutional independence against political pressure, which is an important prerequisite for the kind of rights-protecting constitutional adjudication that the Hindu law reform movement needs the courts to perform.

The doctrine of basic structure, which the Appellate Division effectively recognized in the Sixteenth Amendment case, holds that certain fundamental features of the Constitution are immune from amendment even by the constituent power of the Parliament. In the Indian jurisprudence from which it was derived, the basic structure includes such things as the supremacy of the Constitution, the separation of powers, the federal character, the secular character, and the fundamental rights. The recognition of the basic structure doctrine in

Bangladesh opens the possibility that constitutional amendments removing or weakening the fundamental rights protections of the Hindu minority might themselves be challenged as violations of basic structure.

CHAPTER TWO: THE FUNDAMENTAL RIGHTS FRAMEWORK AND ITS APPLICATION TO HINDU PERSONAL LAW

2.1 Article 27: Equality Before Law

Article 27 of the Constitution of Bangladesh provides that all citizens are equal before law and are entitled to equal protection of law. This deceptively simple provision contains a world of jurisprudential complexity that has been the subject of extensive judicial and academic analysis across common law jurisdictions.

The equality guarantee of Article 27 has two components: equality before the law and equal protection of the law. These two formulations, though sometimes used interchangeably, carry distinct jurisprudential meanings. Equality before the law, derived from the Diceyan concept of the rule of law, refers to the principle that all persons are subject to the same law and that no one is above the law. Equal protection of the law, derived primarily from American constitutional jurisprudence and applied throughout the Commonwealth, refers to the more substantive principle that the law must treat similarly situated persons similarly, that distinctions drawn by law must be rationally connected to legitimate governmental objectives.

The application of Article 27 to Hindu personal law raises immediate and powerful challenges. Hindu personal law does not apply equally to all citizens. It applies to Hindu citizens and not to others. The rules it applies to Hindu citizens in matters of marriage, succession, adoption, and maintenance are fundamentally different from the rules that apply to Muslim citizens in these same domains. A Hindu widow in Bangladesh has, as we have analyzed in previous parts, significantly fewer inheritance rights than a Muslim widow. A Hindu wife in Bangladesh has no right to divorce, whereas a Muslim wife has several mechanisms for obtaining dissolution of marriage. These are not peripheral differences. They are fundamental differences in the legal rights of citizens who are otherwise in comparable situations, differences that are determined entirely by their religious identity.

The question is whether these differences violate Article 27. The traditional answer in Bangladesh, as in India before the Indian courts began to take a more searching look at personal law through the constitutional lens, has been no. The reasoning has been that Article 27 guarantees equality among persons subject to the same law, not equality across different personal law systems. Hindus and Muslims are not similarly situated for the purposes of personal law because they belong to different religious communities, and personal law is the law of the religious community, not the general law of the state. On this view, applying different personal law to Hindus and Muslims is no more a violation of Article 27 than applying different rules of cricket and football to cricketers and footballers.

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This reasoning is deeply unsatisfactory and its unsatisfactoriness becomes clearer the more carefully it is examined. It treats the fact of religious community membership as a relevant legal distinction for purposes of personal law without explaining why religious community membership should be a legally relevant distinction in a secular constitutional order. It assumes that religious community membership is a fixed and binary category, which in practice it is not: many Bangladeshis have mixed religious ancestry, convert between religions, or are secular in practice regardless of their formal religious affiliation. And most importantly, it ignores the functional reality that the Hindu personal law system systematically disadvantages Hindu citizens compared to Muslim citizens in the exercise of rights, particularly property rights and family autonomy, that the Constitution treats as fundamental.

2.2 Article 28: Non-Discrimination on Grounds of Religion

Article 28 of the Constitution provides that the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, or place of birth. This prohibition is more specific than the general equality guarantee of Article 27 and is more directly applicable to the Hindu personal law situation.

The most powerful argument for the application of Article 28 to Hindu personal law runs as follows. The state of Bangladesh, by maintaining a system of Hindu personal law that applies to citizens by virtue of their religious identity, is treating citizens differently on the basis of their religion. A Hindu citizen, by reason of being Hindu, is subject to legal rules that deny her the inheritance rights available to a Muslim citizen, the divorce rights available to a Muslim citizen, and the adoption rights that are structured differently for Hindus and Muslims. These differences in legal treatment are not incidental. They are the direct result of the state's choice to maintain differentiated personal law systems organized on the basis of religious identity.

The counterargument is that Article 28 prohibits discrimination by the state but does not require the state to intervene in the internal arrangements of religious communities. On this view, the state is not discriminating by maintaining different personal law systems for different communities; it is rather respecting the internal autonomy of those communities to govern their own affairs according to their own traditions. The Article 28 prohibition applies to state action that discriminates on grounds of religion, not to state recognition of different community-based legal regimes.

This counterargument has a surface plausibility but collapses under examination. The Hindu personal law system is not simply the internal arrangement of the Hindu community. It is enforced by state courts, implemented through state institutions, and upheld by state police power. When a court applies the Dayabhaga rules to deny a Hindu widow her fair share of her deceased husband's property, the court is a state institution exercising state power in a manner that produces outcomes that discriminate against that widow on the basis of her Hindu religious identity. The state is not merely recognizing a community arrangement. It is actively enforcing it. And the enforcement of a discriminatory arrangement by state institutions is state discrimination within the meaning of Article 28, regardless of the fact that the discriminatory rule originated in religious tradition rather than in explicit legislative choice.

2.3 Article 28(2): The Special Significance of Gender Non-Discrimination

Article 28(2) of the Constitution specifically provides that women shall have equal rights with men in all spheres of state and public life. This provision, while less sweeping than a comprehensive personal law equality guarantee, is of particular significance because the most severe injustices of Hindu personal law are gendered: they deprive Hindu women of inheritance rights, maintenance rights, and personal autonomy that their male counterparts enjoy as a matter of course.

The relationship between Article 28(2)'s guarantee of women's equal rights and the maintenance of a personal law system that systematically disadvantages women on the basis of their sex and their religion simultaneously raises profound constitutional questions. The provision says that women shall have equal rights with men in all spheres of state and public life. If the law of inheritance, the law of marriage, and the law of adoption are understood as belonging to state and public life in the relevant sense, then Article 28(2) demands that the rules governing these matters treat women equally with men, and a personal law system that systematically does not do so is unconstitutional.

The personal law exception, considered in the next chapter, attempts to carve out personal law as a domain that is not within the sphere of "state and public life" for purposes of Article 28(2). The argument would be that personal law governs private and religious matters rather than state and public life in the relevant constitutional sense. This argument is, as we shall show, untenable: the legal rules governing inheritance, family property, and personal status have enormous practical consequences for economic life, public participation, and social equality that squarely bring them within the constitutional scope of Article 28(2).

2.4 Article 42: The Right to Property and Hindu Law

Article 42 of the Constitution guarantees every citizen the right to acquire, hold, transfer, or otherwise dispose of property, subject to reasonable restrictions in the public interest. This property right guarantee intersects with Hindu personal law in multiple ways. Most directly, the inheritance rules of the Dayabhaga system restrict Hindu women's ability to acquire and hold property by limiting their inheritance rights compared to those of male heirs. The argument that these restrictions violate Article 42 is a powerful one that has not been adequately explored in the Bangladeshi academic or advocacy literature.

The counterargument to the Article 42 challenge to Hindu inheritance law follows the same structure as the Article 28 counterargument: the restrictions on women's inheritance rights under Hindu personal law are restrictions imposed by religious tradition rather than by state legislation, and Article 42 governs only state-imposed restrictions on property rights. This counterargument fails for the same reason as before: the inheritance rules of the Dayabhaga system are enforced by state courts, and the enforcement of discriminatory inheritance rules by state institutions is state action that restricts the property rights of Hindu women on grounds of their sex and their religious identity.

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CHAPTER THREE: THE PERSONAL LAW EXCEPTION: DOCTRINE, CRITIQUE, AND THE CASE FOR ITS ABANDONMENT

3.1 The Origins of the Personal Law Exception in Colonial Jurisprudence

The personal law exception, as a doctrine that shields religious personal law from constitutional challenge, has its origins in the colonial legal order that Bangladesh inherited. British colonial jurisprudence in India operated on the premise that the governance of Hindu and Muslim communities in their domestic affairs should proceed, as far as possible, according to the laws of those communities as interpreted by colonial courts. This was not a commitment to community autonomy for its own sake. It was a pragmatic political arrangement that allowed the colonial administration to exercise effective control without provoking the intense religious resistance that would have followed any attempt at comprehensive reform of personal law.

When India became independent in 1947, the personal law arrangement was inherited as a feature of the legal landscape. The Indian Constituent Assembly debated extensively whether to include a provision requiring the state to work toward a Uniform Civil Code as one of the Directive Principles of State Policy. The provision that was ultimately adopted, Article 44 of the Indian Constitution, directed the state to endeavor to secure for citizens a Uniform Civil Code throughout the territory of India. This formulation, which placed the Uniform Civil Code in the non-enforceable Directive Principles rather than the enforceable Fundamental Rights, was a political compromise that acknowledged the aspiration toward legal uniformity while deferring its realization to some future political moment.

Bangladesh's 1972 Constitution did not include a comparable provision on a Uniform Civil Code. The framers, perhaps aware of the political sensitivity of the issue and focused on other constitutional priorities, left the relationship between the constitutional equality guarantees and the personal law system unaddressed. This omission was not a deliberate constitutional endorsement of the personal law system's continuation indefinitely. But it created a doctrinal vacuum that courts and legislators have used, by default, to preserve the status quo.

3.2 The Personal Law Exception in Bangladeshi Courts: A Doctrine Without Foundation

Bangladeshi courts have generally treated Hindu personal law as standing outside the ordinary scope of constitutional scrutiny, on the implicit assumption that the constitutional equality guarantees do not apply to the domain of personal law. This assumption has rarely been directly examined or argued in Bangladeshi judicial decisions. It operates more as a default assumption than as a reasoned constitutional position.

The doctrinal foundation for this assumption, to the extent that it exists, rests on two pillars. The first is the argument that personal law is part of the religious practice of the community that it governs, and that the constitutional right to freedom of religion protects the right of a religious community to maintain its own personal law. The second is the argument that the constitutional

equality guarantees were not intended by their framers to apply to personal law matters, which were understood to be within the domain of communal autonomy rather than individual constitutional rights.

Both pillars are weak. The first pillar, the freedom of religion argument, conflates the freedom of religious practice with the freedom of a community to impose its traditional legal rules on individual members regardless of those members' consent. The constitutional right to freedom of religion, as understood in contemporary human rights jurisprudence, protects the individual's right to practice their religion, not the community's right to have its legal system enforced by the state against individuals who might prefer different legal arrangements. A Hindu woman who would prefer to have equal inheritance rights with her brother, or who would prefer to be able to obtain a divorce rather than remaining in an unhappy marriage, is not exercising a religious choice when she is denied these options by the personal law system. She is being subjected to a legal rule that she has not chosen and that denies her the equality the Constitution promises.

The second pillar, the framers' intent argument, is historically contestable. The framers of the 1972 Constitution included provisions that were modeled on the Indian constitutional framework, which itself was understood by its leading framers, most notably Dr. B.R. Ambedkar, as requiring the eventual abolition of discriminatory religious personal law through the mechanism of the Uniform Civil Code. The fact that the 1972 Bangladeshi Constitution did not include an explicit Uniform Civil Code provision does not demonstrate that its framers intended the personal law exception to be permanent. It demonstrates only that they deferred the question, as the Indian framers had also deferred it.

3.3 The Comparison with India: The Supreme Court's Progressive Erosion of the Personal Law Exception

The Indian Supreme Court's treatment of the personal law exception provides the most important comparative jurisprudence for the Bangladeshi analysis, because India faces a structurally similar situation, with multiple religious personal law systems operating alongside a constitutional guarantee of equality and non-discrimination, and because Indian courts have over the decades developed a substantial body of reasoning about when and how constitutional principles apply to personal law matters.

The trajectory of Indian jurisprudence on this question has been one of progressive erosion of the personal law exception. The early post-independence Indian cases tended to treat personal law as outside the scope of the fundamental rights provisions, on the ground that personal law was not state-made law and hence not subject to the constitutional constraints on state action. This position was most clearly articulated in cases like State of Bombay v. Narasu Appa Mali (1952), in which the Bombay High Court held that personal law was not "law" within the meaning of Article 13 of the Indian Constitution, which makes void any law that takes away or abridges the rights conferred by Part III.

However, the Indian Supreme Court progressively departed from this position. The landmark judgment of Sarla Mudgal v. Union of India (1995) addressed the practice of Hindu men

converting to Islam in order to contract a second marriage, and the Court expressed strong views on the need for a Uniform Civil Code. More directly, the judgment in Danial Latifi v. Union of India (2001) interpreted Muslim personal law on maintenance in a manner that aligned it more closely with the constitutional guarantee of equality, effectively subjecting personal law to constitutional scrutiny indirectly through statutory interpretation. The judgment of the Supreme Court in Shayara Bano v. Union of India (2017), which struck down the practice of instant triple talaq as unconstitutional, represented a direct application of constitutional equality and dignity norms to the domain of Muslim personal law, effectively overruling the earlier position that personal law was immune from constitutional challenge.

The Indian jurisprudential trajectory points clearly toward the position that religious personal law is subject to constitutional scrutiny, at least when it violates the core guarantees of equality and dignity. This position is available to Bangladeshi courts and advocates, and the comparative authority of the Indian Supreme Court's reasoning, developed in a constitutional system closely similar to Bangladesh's, provides strong support for its adoption.

3.4 The South African Model: The Constitutional Court and Personal Law

The South African Constitutional Court has addressed the tension between cultural and religious personal law and constitutional equality in a series of landmark decisions that are of great comparative relevance. The Constitution of South Africa, adopted in 1996, includes both a strong equality guarantee and an explicit recognition of the right to practice cultural, religious, and linguistic traditions. These two commitments created exactly the tension between personal law and constitutional equality that the Bangladeshi system faces.

The Constitutional Court's approach, most fully developed in cases such as Bhe v. Magistrate, Khayelitsha (2004) and Gumede v. President of the Republic of South Africa (2009), has been to hold that customary and religious personal law must comply with the Constitution's equality guarantees. In Bhe, the Court struck down the rule of primogeniture in customary succession law that excluded women and illegitimate children from inheritance, holding that it violated the constitutional guarantee of equality. The Court's reasoning was that customary law, while worthy of recognition and respect, could not in a constitutional democracy be used to deny women their equal rights.

The South African approach is more directly applicable to the Bangladeshi situation than the Indian approach for several reasons. South Africa's constitutional framework explicitly addresses the tension between cultural rights and equality in a way that Indian constitutional law does not, producing a richer jurisprudential analysis. The South African Court's reasoning in Bhe is directly applicable to the Dayabhaga rules that deny Hindu women equal succession rights: the logic of the argument, that a legal rule derived from cultural or religious tradition cannot override the constitutional guarantee of equality, applies with equal force to Hindu personal law as it does to the customary law of African communities.

CHAPTER FOUR: TRANSFORMATIVE CONSTITUTIONALISM AS THE JURISPRUDENTIAL FRAMEWORK FOR HINDU LAW REFORM IN BANGLADESH

4.1 Karl Klare and the Origins of the Theory

The theory of transformative constitutionalism was introduced into constitutional scholarship by Karl Klare in his 1998 article "Legal Culture and Transformative Constitutionalism," published in the South African Journal on Human Rights. Writing in the specific context of post-apartheid South Africa's new constitutional order, Klare argued that the South African Constitution was transformative in character, committed not merely to regulating or limiting existing power arrangements but to fundamentally transforming them in the direction of greater equality, democracy, and human dignity.

Klare's definition of transformative constitutionalism described it as "a long-term project of constitutional enactment, interpretation, and enforcement committed to transforming a country's political and social institutions and power relationships in a democratic, participatory, and egalitarian direction." Several features of this definition deserve attention. First, the emphasis on the long-term character of the project: constitutional transformation is not achieved in a single legislative act or judicial decision but through sustained effort across many years. Second, the emphasis on interpretation and enforcement as well as enactment: the transformative character of the constitution is realized not merely in its text but in how that text is read and applied by courts, legislators, and administrators. Third, the explicitly egalitarian direction of the transformation: transformative constitutionalism is not neutral about outcomes. It is committed to outcomes that expand equality and diminish discrimination.

As the SCC Online analysis of January 2026 notes, transformative constitutionalism refers to the concept of reinterpretation of the Constitution to keep up with changes in society. It is founded on the cardinal principles of equality, liberty, fraternity, and dignity. The judiciary plays a key role as the idea holds that the law should be used as a tool for social change and interpreted in accordance with societal needs.

Applied to the Bangladeshi context, the theory of transformative constitutionalism holds that the Constitution of Bangladesh is not merely a set of rules for organizing the institutions of government. It is a commitment to a transformation of Bangladeshi society in the direction of equality, dignity, and non-discrimination. This commitment extends to the domain of Hindu personal law. A constitution committed to transformative equality cannot consistently maintain, as the state has maintained for more than five decades, a system of personal law that systematically denies equality to thirteen million of its citizens in the most intimate domains of their legal lives.

4.2 The Postcolonial Dimension of Transformative Constitutionalism

Upendra Baxi, writing from the perspective of postcolonial jurisprudence, has argued that the dominant legal traditions of formerly colonized societies need to be examined critically through the lens of those whom they historically marginalized. His concept of "suffering-centered"

approaches to human rights, developed in works including "The Future of Human Rights" (2012), holds that the test of any constitutional or human rights framework is whether it actually addresses the conditions of those who suffer most under existing legal arrangements.

Applied to the Hindu law context in Bangladesh, Baxi's framework suggests that the test of Bangladesh's constitutional commitments to equality and dignity is not whether they are articulated in fine constitutional language but whether they actually reach the Hindu widow in rural Bangladesh who is denied her fair share of her husband's property by the Dayabhaga rules, the Hindu girl whose marriage is effectively permanent regardless of what she suffers within it because there is no Hindu divorce law, and the Hindu family whose land has been stripped through the Vested Property mechanism without effective legal remedy.

The postcolonial dimension of this analysis is important because the legal arrangements that deny Hindu citizens equality in Bangladesh are, as previous parts of this treatise have extensively documented, colonial constructions. The Dayabhaga system as applied by Bangladeshi courts is not simply the ancient Hindu law of Bengal. It is the colonial construction of that law, shaped by British administrative priorities, interpreted by colonial judges who brought their own assumptions to the texts, and maintained by post-colonial governments that never undertook the comprehensive review that genuine decolonization of the law would have required. Transformative constitutionalism, in the postcolonial context, means not merely applying contemporary constitutional principles to inherited legal arrangements but critically interrogating those arrangements to expose their colonial origins and to ask whether they serve the interests of the communities they purport to govern.

4.3 Feminist Transformative Constitutionalism and the Hindu Law Question

The intersection of transformative constitutionalism with feminist legal theory produces what Ratna Kapur and others have called feminist transformative constitutionalism: an approach that uses the transformative potential of the constitution to address specifically gendered forms of inequality and subordination.

Feminist transformative constitutionalism differs from a purely formal equality approach in a crucial respect. The formal equality approach holds that women and men should be treated identically by the law. The feminist transformative approach holds that identical treatment is not sufficient when the underlying social conditions are not equal, and that the constitution's commitment to equality requires not identical treatment but treatment that is genuinely responsive to the different situations of differently positioned groups. In the context of Hindu personal law, this means that reforming the law to give women nominally equal inheritance rights is insufficient if the social conditions of Hindu families are such that women are unable to exercise those rights effectively because of economic dependence, social pressure, or inadequate legal support.

Feminist transformative constitutionalism also insists that the constitution's commitment to equality extends to the domestic sphere, the sphere of family and personal relations, which traditional liberal constitutional theory has typically treated as private and therefore outside the

reach of constitutional norms. As feminist legal scholars from Catharine MacKinnon to Flavia Agnes have argued, the public/private distinction that excludes family law from constitutional scrutiny reproduces in the legal domain the same gendered power arrangements that feminist politics seeks to challenge. The relegation of Hindu personal law to a "private" domain beyond constitutional reach is itself a gendered political choice that must be challenged rather than accepted.

The most recent scholarship on feminist constitutionalism, including work published in the International Journal of Constitutional Law in 2022 and 2025, has consistently argued that constitutional equality guarantees must be applied to the domain of religious and customary personal law if they are to have genuine meaning. The Sabarimala judgment of the Indian Supreme Court in 2018, which held that the exclusion of women of menstruating age from a Hindu temple violated their constitutional equality rights, represents an application of this feminist constitutional reasoning to a specifically Hindu religious context. While the Sabarimala case concerned access to a religious site rather than personal law per se, its reasoning extends naturally to the personal law context: if the constitution's equality guarantees override religious tradition in the domain of temple access, they must equally override religious tradition in the domain of inheritance and marriage.

4.4 The Intersectional Dimension: Caste, Gender, and Religion in Constitutional Analysis

Contemporary constitutional theory has been significantly shaped by the concept of intersectionality, developed initially by Kimberle Crenshaw in the American context and subsequently applied across a range of constitutional jurisdictions. Intersectionality holds that different forms of discrimination do not operate independently but interact to produce compound forms of disadvantage that cannot be fully understood by examining any single dimension of discrimination in isolation.

The situation of Hindu women, and particularly of Dalit Hindu women, in Bangladesh provides a powerful illustration of intersectionality's importance for constitutional analysis. A Dalit Hindu woman in rural Bangladesh faces, simultaneously, the disadvantage of being female in a strongly patriarchal social order, the disadvantage of being Hindu in a Muslim-majority state, and the disadvantage of being Dalit in a caste-hierarchical community. The constitutional analysis of her situation cannot proceed adequately by examining any one of these dimensions separately. The Article 28 non-discrimination provisions prohibit discrimination on grounds of religion, caste, and sex separately. But the Dalit Hindu woman's disadvantage is not a function of any one of these alone. It arises from their interaction, and a constitutional remedy adequate to her situation must address that interaction.

The recognition of intersectional analysis in constitutional jurisprudence has been relatively slow in South Asia, but it is developing. The Indian Supreme Court has in recent years invoked concepts related to intersectionality in cases involving Dalit women and other multiply disadvantaged groups. The Bangladeshi courts have not yet developed this jurisprudence, but the theoretical foundations for doing so are present in the text of the Constitution, which prohibits

discrimination on multiple grounds simultaneously, and in the international human rights instruments to which Bangladesh is a signatory.

CHAPTER FIVE: THE JULY CHARTER OF 2025 AND THE FEBRUARY 2026 REFERENDUM: CONSTITUTIONAL REFORM AND ITS IMPLICATIONS FOR HINDU LAW

5.1 The Constitutional Reform Process: Origins and Character

The constitutional reform process that culminated in the July Charter of 2025 and the February 2026 referendum was born in the extraordinary political upheaval of 2024. When the student-led uprising toppled the Awami League government in August 2024, the incoming Interim Government under Muhammad Yunus faced the challenge of managing a constitutional transition. The political legitimacy of the new government rested primarily on the consent of the student movement and the implicit support of the military. It lacked the democratic mandate of a parliamentary majority and hence needed to work through consensus rather than legislation.

Following the July-August 2024 mass uprising which led to the fall of former Prime Minister Sheikh Hasina's authoritarian government, the interim government sought to reform the state machinery. This process led to the July Charter of 2025, a politically negotiated document that consolidates over 80 reform proposals, nearly half of them constitutional. (ConstitutionNet)

The Constitutional Reform Commission that was established to propose specific constitutional changes submitted its report in January 2025. The CRC put forward bold reforms intended to break down Bangladesh's centralized power structures and strengthen democratic accountability, including the creation of a series of guarantor institutions and a National Constitutional Council as a meta-guarantor institution, the restructuring of the legislature from a parliamentary to a semi-parliamentary moderated system, the introduction of presidential and prime ministerial term limits, and the expansion of fundamental rights. (IACL-IADC Blog)

For the Hindu minority, the CRC process was deeply disappointing in one specific and critical respect. The CRC's blind spot extends to minority communities including religious groups like Hindus, Buddhists, and Christians, as well as ethnic minorities such as the Chakma people and the Garo people, and linguistic minorities such as Urdu-speaking Biharis, whose exclusion contradicts the report's stated commitment to pluralism. (IACL-IADC Blog) A constitutional reform process that excluded the communities most in need of constitutional protection from its consultations was not a process capable of producing constitutionally adequate reforms for those communities.

5.2 The July Charter's Treatment of Minority Rights

The July National Charter 2025, a political declaration based on the consensus between 30 political parties and the interim government, was signed on October 17, 2025. Over 80 reform

proposals were proposed in the charter, including constitutional, judicial and legislative reforms. Key proposals include increasing women's political representation in the legislature, imposing prime ministerial term limits, enhancing presidential powers, expanding fundamental rights, and protecting judicial freedom. (Wikipedia)

The Charter's expansion of fundamental rights is the provision most directly relevant to the Hindu law reform agenda. The specific content of the expanded fundamental rights provisions determines whether the constitutional framework for challenging Hindu personal law has been strengthened. From the available accounts of the Charter's content, the expansion of fundamental rights appears to have been primarily in the areas of economic and social rights rather than in the specific area of personal law equality, which is the dimension most critical for Hindu minority law reform.

The referendum question included, among its proposals, the expansion of fundamental rights as one of the 30 reform proposals on which political parties reached consensus. (Wikipedia) The precise content of this expansion will determine its utility for the Hindu law reform movement. If the expanded fundamental rights include more explicit protections against religious personal law discrimination, they could significantly strengthen the constitutional case for Hindu personal law reform. If the expansion is limited to economic and social rights without addressing the personal law equality question, the Charter will have missed an important opportunity.

The proposed Upper House of 105 members includes 100 elected via proportional representation based on Lower House votes and five nominated by the President to represent marginalized groups. While proportional representation ensures diversity in legislative representation for religious and ethnic minorities such as the Hindu, Christian, Chakma, and Garo communities, the Upper House's four-year term aligned with the Lower House fails to provide institutional continuity. (Verfassungsblog) The proposed bicameral legislature, if it becomes a reality under the new BNP government's constitutional implementation obligations, could provide a more structured mechanism for minority voices to be represented in the legislative process.

5.3 The Referendum Result and Its Constitutional Significance

On February 12, 2026, voters in Bangladesh cast their ballots concurrently in the 13th parliamentary elections and a constitutional referendum. The Bangladesh Nationalist Party secured a decisive two-thirds supermajority. The elections saw a voter turnout of approximately 60%, with a majority of voters also endorsing the constitutional referendum. (ConstitutionNet)

The referendum's ambiguously framed questions left unclear which of the July Charter's proposals were actually approved and what binding force they carry. (ConstitutionNet) This constitutional ambiguity is itself a significant problem. The Hindu law reform movement, which has a long history of legislative promises that were not kept, cannot rely on ambiguous constitutional mandates. The new BNP government, with its two-thirds supermajority, has the constitutional authority to enact the specific constitutional amendments needed to give the July Charter's proposals binding legal force. Whether it will do so, and with what content, is the central constitutional question of the immediate post-election period.

The Yes vote does not, by itself, change the Constitution. It is a mandate to change the Constitution. It is considered politically binding, not legally binding. If the charter is passed, the newly elected parliament will act as a constituent assembly to enact the changes in the constitution agreed in the charter. (Wikipedia) The BNP government thus has both the authority and the mandate to incorporate the Charter's reforms into the Constitution. The question for the Hindu minority is whether the constitutional reform process that follows will include adequate protections for their rights.

5.4 The Women's Rights Commission Report and Its Significance for Hindu Law

In April 2025, the commission formed by the interim government to propose measures to protect women's and girls' rights recommended steps including criminalizing marital rape, providing equal parental rights for women, reforming inheritance laws, and increasing women's parliamentary representation. (Human Rights Watch) The recommendation to reform inheritance laws, if pursued as a legislative agenda, would directly benefit Hindu women whose inheritance rights under the Dayabhaga system are severely limited. The Women's Rights Commission's report represents the first significant official acknowledgment that inheritance law reform is part of the government's reform agenda.

Soon after the commission's report was issued, nearly 20,000 supporters of the Islamist organization Hefazat-e-Islam rallied in the capital to protest the proposed reforms. (Human Rights Watch) This reaction illustrates the political obstacles that inheritance law reform, whether of Muslim personal law, Hindu personal law, or both, will face. The Islamist opposition to inheritance law reform is primarily directed at the proposals relating to Muslim law, but any initiative on Hindu law reform will occur in the same political atmosphere of Islamist resistance to gender equality in personal law.

The political significance of the Islamist mobilization against the Women's Rights Commission's recommendations should not be overstated in either direction. It demonstrates that there is organized opposition to personal law reform. But it also demonstrates that the reform agenda has sufficient political salience to provoke a reaction, which itself indicates that the issue is alive in Bangladesh's political discourse in a way that would not have been true fifteen years ago. The reform movement's task is to ensure that the political salience of the issue translates into legislative momentum rather than merely into opposition mobilization.

CHAPTER SIX: THE NEW BNP GOVERNMENT AND ITS CONSTITUTIONAL OBLIGATIONS TOWARD HINDU PERSONAL LAW REFORM

6.1 Constitutional Obligations Arising from the Electoral Mandate

The BNP government that came to power in February 2026 with a two-thirds supermajority in the National Parliament faces a set of constitutional obligations with respect to the Hindu minority that are more extensive than those faced by any previous government, for two reasons.

First, the constitutional referendum that accompanied the February 2026 election endorsed a package of reforms that includes the expansion of fundamental rights, and the new Parliament is obligated to give those reforms constitutional force within 180 days of its first session. Second, the BNP's own pre-election commitments to minority protection, however vague in their specifics, created political expectations that the party now governs against.

Legal experts at a seminar organized by BLAST at Dhaka University in November 2025 observed that although Article 7 declares the Constitution as the supreme law of Bangladesh, in reality, personal laws often take precedence, undermining the right to equality before the law. They argued that despite guarantees of equal rights, discrimination continues in practice. References in the 1972 Constitution to a singular Bengali identity, and the later adoption of a state religion, have marginalized indigenous peoples, Dalits, and religious minority communities. (Dhaka Tribune)

This legal expert assessment, delivered on the fifty-third anniversary of the Constitution, captures precisely the constitutional problem that the new BNP government inherits. The Constitution nominally guarantees equality. Personal laws deny it in practice. The gap between constitutional promise and legislative reality has been maintained across fifty years and multiple governments. The new government has both the constitutional authority, through its two-thirds supermajority, and the political mandate, through the referendum endorsement of expanded fundamental rights, to address this gap in ways that previous governments could not or would not.

6.2 The BNP's Historical Record and the Cautionary Analysis

Any analysis of the BNP government's constitutional obligations must be tempered by a realistic assessment of the party's historical record on minority rights. As was noted in the analysis of the Vested Property question in Part Nine, the BNP government of 2001 to 2006 was responsible for the systematic sabotage of the Vested Property Return Act's implementation. In 1977, the BNP's founder Ziaur Rahman was responsible for removing the word secularism from the Constitution, and party members have repeatedly been associated with violence against the country's Hindu minority. (Prokerala)

The BNP's current constitutional obligations arise not from its historical preferences but from the constitutional and referendum framework within which it now governs. A party that governs under a constitution that has been democratically reformed to expand fundamental rights, under a referendum mandate to implement those reforms, and with an Upper House designed to provide proportional representation to minority communities, is a party that faces stronger constitutional constraints on its treatment of minorities than it faced in earlier periods when it governed under the unreformed constitution with a unicameral legislature.

The effective exercise of those constitutional constraints depends on two things: the activism of the Supreme Court in enforcing the expanded fundamental rights, and the organized advocacy of civil society and minority communities in holding the government to its constitutional obligations. Both of these must be developed and sustained if the constitutional framework

created by the July Charter and the February 2026 referendum is to produce genuine benefits for the Hindu minority.

6.3 The Ministry of Minority Affairs Proposal

The demand for a Ministry of Minority Affairs, advanced by (Hindus for Human Rights) in December 2025, represents an important institutional proposal that the new BNP government could adopt without extensive legislative action. (Hindus for Human Rights) called on the Interim Government of Bangladesh to urgently assemble a Ministry for Minority Affairs in the wake of renewed violence against Hindu communities. (Hindus for Human Rights)

A dedicated Ministry of Minority Affairs would serve several functions relevant to the Hindu law reform agenda. It would create an institutional focal point for the coordination of minority protection policies across government departments. It would provide an institutional home for the monitoring of Hindu personal law reform, Vested Property restitution, and related initiatives. And it would signal, at the level of governmental organization, a commitment to treating minority rights as a distinct and priority area of public policy rather than an incidental concern to be addressed only when political pressure demands it.

The historical precedent for a Ministry of Minority Affairs in the subcontinent is well established. India maintains a Ministry of Minority Affairs that, whatever its shortcomings, provides institutional infrastructure for minority-focused policy. Nepal's constitution provides for minority representation in governance. The establishment of a comparable institution in Bangladesh would be both constitutionally appropriate and politically feasible for a government with a two-thirds parliamentary majority and a referendum mandate.

CHAPTER SEVEN: THE DIRECTIVE PRINCIPLES OF STATE POLICY AND THEIR RELEVANCE TO HINDU LAW REFORM

7.1 The Structure and Legal Status of Directive Principles

Part II of the Constitution of Bangladesh sets out the Fundamental Principles of State Policy, commonly referred to as the directive principles. These provisions, which include commitments to the welfare of the people, the emancipation of the peasantry and working people, democratic local government, equal opportunity for citizens, and the provision of basic necessities including food, clothing, shelter, education, and medical care, are not enforceable in the same way as the fundamental rights of Part III. They are described by the Constitution itself as "fundamental to the governance of Bangladesh" and are to be "applied by the State in making laws," but they are not directly enforceable through writ petitions before the High Court Division.

Despite their non-enforceable status, the directive principles are constitutionally significant for several reasons. First, they can be used by courts to interpret legislation in ways that give effect to their content, even where they cannot themselves be the basis for judicial invalidation of

legislation. Second, they establish a constitutional standard by which legislative action or inaction can be politically and morally evaluated: a government that fails to pursue the directive principles is failing in its constitutional duty even if courts cannot compel it to act. Third, in the hands of an activist judiciary willing to use them as interpretive resources, the directive principles can do significant constitutional work even without direct enforceability.

Article 19 of the Constitution, which directs the state to endeavor to ensure equality of opportunity to all citizens and to adopt effective measures to remove social and economic inequality, is particularly relevant to the Hindu law reform agenda. The social and economic inequality that results from the Dayabhaga system's limitation of Hindu women's inheritance rights is exactly the kind of inequality that Article 19 contemplates the state working to remove. Similarly, Article 28(1)'s directive that the state shall ensure the provision of basic necessities of life relates to the material welfare of Hindu families, including their access to the economic resources that adequate inheritance rights would provide.

7.2 The Relationship Between Directive Principles and Fundamental Rights in Constitutional Adjudication

The relationship between the directive principles and the fundamental rights has been a persistently contested question in the constitutional jurisprudence of both India and Bangladesh. In India, the Supreme Court's resolution of this question, most definitively in the Minerva Mills case (1980), held that neither the fundamental rights nor the directive principles are superior to the other, and that they must be harmoniously construed as complementary aspects of the constitutional vision of a just social order.

Applying this harmonious construction approach to the Hindu law context in Bangladesh, the fundamental rights guarantee of equality (Article 27) and non-discrimination (Article 28) must be construed in light of the directive principle mandate to remove social and economic inequality (Article 19). This harmonious reading produces an affirmative constitutional obligation on the state to reform legal arrangements that produce social and economic inequality along religious and gender lines. The directive principles provide the positive orientation of the constitutional commitment, and the fundamental rights provide the judicially enforceable minimum standard.

A Bangladeshi court that took this harmonious construction approach seriously would be in a position to hold not merely that specific provisions of Hindu personal law violate the constitutional equality guarantees but that the state's failure to comprehensively reform Hindu personal law violates the constitutional mandate to remove social and economic inequality. This would be a significant jurisprudential move, because it would shift the constitutional analysis from a defensive posture (challenging specific rules as unconstitutional) to an affirmative posture (requiring the state to act to bring the personal law system into conformity with constitutional mandates).

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CHAPTER EIGHT: THE JUDICIAL ROLE IN HINDU LAW REFORM: CONSTITUTIONAL ADJUDICATION AND ITS LIMITS

8.1 The Supreme Court of Bangladesh: Structure, Independence, and Capacity

The Supreme Court of Bangladesh consists of the Appellate Division and the High Court Division. The High Court Division has original jurisdiction to enforce fundamental rights through the writ jurisdiction provided by Article 102 of the Constitution. The Appellate Division hears appeals from the High Court Division and has appellate jurisdiction over all courts in Bangladesh.

The independence of the judiciary has been a persistent concern in Bangladesh's political history. The Fifth, Sixteenth, and other amendments all touched upon the relationship between the executive and judicial branches. The Sixteenth Amendment case's outcome, in which the Appellate Division struck down a constitutional amendment on basic structure grounds, demonstrated that the Supreme Court is capable of asserting its independence against political pressure. But the institutional conditions for sustained judicial independence in Bangladesh remain fragile. Judicial appointments are politically sensitive. Resources available to the courts are limited. And the social and political pressures that have historically constrained judicial activism on minority rights issues are still present.

Within these constraints, the Supreme Court has nevertheless produced occasional judgments of significant importance for minority rights. The 2008 Rule Nisi on the Vested Property Acts, analyzed in Part Nine, demonstrated the court's willingness to engage with fundamental constitutional questions about the minority property regime. The court's treatment of maintenance issues in cases like Gopal Chandra v. Purnasasi has shaped the doctrine in ways that, if not always favorable to Hindu women's rights, at least demonstrate judicial engagement with the substance of Hindu personal law questions.

The challenge for the Hindu law reform movement is to channel the court's potential for constitutional adjudication in productive directions. This requires the development of test cases, the preparation of sophisticated constitutional arguments, and the building of a cadre of advocates with both deep knowledge of Hindu personal law doctrine and expertise in constitutional litigation. Bangladesh has a significant legal community, and there are advocates, academics, and public interest litigators who are capable of developing this expertise. The question is whether the political and financial support for sustained constitutional litigation on Hindu law matters is available.

8.2 The Writ Jurisdiction: Potential and Practice

The High Court Division's writ jurisdiction under Article 102 provides the primary avenue for constitutional challenges to Hindu personal law. Article 102 empowers the High Court Division to issue directions or orders to any person performing functions in connection with the affairs of the Republic, and to enforce fundamental rights through appropriate orders including writs in the nature of mandamus, prohibition, certiorari, quo warranto, and habeas corpus.

The application of the writ jurisdiction to Hindu personal law challenges presents several doctrinal questions. The first is whether the Dayabhaga rules, which are derived from ancient texts rather than from explicit legislative enactment, constitute "law" within the meaning of Article 26, which makes void any law inconsistent with the fundamental rights provisions. The answer to this question, which the courts have not definitively addressed, is crucial: if the Dayabhaga rules are "law" within the meaning of Article 26, they can be directly challenged as unconstitutional; if they are not, a different constitutional argument is needed.

The second doctrinal question is whether the application of Hindu personal law by state courts constitutes state action subject to constitutional scrutiny. As was argued in earlier chapters, the answer to this question should be yes: courts are state institutions, and their application of Hindu personal law is an exercise of state power subject to constitutional limits. But the courts have not explicitly embraced this analysis, and developing it through strategic litigation is necessary.

The third doctrinal question is the remedy: if a court holds that a specific provision of Hindu personal law, such as the widow's limited estate or the prohibition on divorce, is unconstitutional, what remedy should it provide? The most aggressive remedy would be to disapply the unconstitutional provision and apply a constitutionally acceptable alternative. A less aggressive remedy would be to issue a declaration of unconstitutionality and require the legislature to act to remedy it. Either approach would be constitutionally available, and the choice between them depends on the court's assessment of the relative institutional competence of courts and legislatures in the reform of complex personal law systems.

8.3 Strategic Litigation: Learning from India, South Africa, and Nepal

The Hindu law reform movement in Bangladesh has not, historically, made systematic use of constitutional litigation as a reform strategy. This contrasts with the experience in India, where strategic litigation has played an important role in the incremental reform of personal law, and in South Africa, where organizations like the Women's Legal Centre have pursued systematic constitutional challenges to discriminatory customary and religious law.

The development of a strategic litigation program for Hindu law reform in Bangladesh would require several elements. First, the identification of test cases with strong facts and clear constitutional arguments: cases where the injustice of the specific personal law rule is vivid and the constitutional argument against it is compelling. Second, the development of legal arguments that are specifically tailored to the Bangladeshi constitutional framework, drawing on comparative jurisprudence but grounded in the specific provisions of Bangladesh's constitution and the specific characteristics of its personal law system. Third, the building of institutional capacity, including the training of advocates, the development of research infrastructure, and the creation of institutional relationships between legal academics and public interest litigators.

The Bangladesh National Women Lawyers Association, Ain O Salish Kendra, the Bangladesh Legal Aid and Services Trust, and the human rights divisions of leading law schools are the obvious institutional homes for such a program. What has been lacking is the coordination,

sustained funding, and strategic vision necessary to move from individual case advocacy to a systematic constitutional litigation program.

CHAPTER NINE: THE BASIC STRUCTURE DOCTRINE AND ITS APPLICATION TO HINDU LAW REFORM

9.1 The Basic Structure Doctrine in Bangladeshi Constitutional Law

The basic structure doctrine, which holds that certain fundamental features of the constitution are immune from amendment even by the constituent power of the Parliament, was effectively recognized by Bangladesh's Appellate Division in the Sixteenth Amendment case. The doctrine was developed originally by the Indian Supreme Court in Kesavananda Bharati v. State of Kerala (1973), one of the most important constitutional decisions in the history of South Asian law, and has since been applied in various forms in numerous constitutional systems.

The basic structure doctrine is significant for the Hindu law reform analysis in two respects. First, if secularism is part of the basic structure of Bangladesh's constitution, then constitutional amendments removing or substantially weakening the secular character of the state may themselves be unconstitutional. The Fifth Amendment's removal of secularism, and the Eighth Amendment's insertion of Islam as the state religion, could theoretically be challenged as violations of the basic structure, an argument that some Bangladeshi constitutional scholars have advanced. If the courts were to accept this argument, it would have significant implications for the constitutional framework within which Hindu law reform operates.

Second, if equality and non-discrimination are part of the basic structure of the constitution, then constitutional amendments that explicitly carved out Hindu personal law from constitutional equality scrutiny would themselves be unconstitutional. This is relevant to the Hindu law reform strategy because it means that even a politically hostile government with a constitutional majority could not simply amend the Constitution to make the personal law exception immune from challenge. The basic structure doctrine provides a constitutional floor below which no government, however powerful, can push the protections available to the Hindu minority.

9.2 The Fundamental Rights as Basic Structure

The question of whether the fundamental rights provisions are part of the basic structure of Bangladesh's constitution has not been definitively resolved. In India, the Supreme Court held in Kesavananda Bharati that the "essential features" of the fundamental rights are part of the basic structure, though the Parliament retains the power to amend the specific content of those rights, provided the amendment does not destroy their essential character.

Applying this analysis to Bangladesh, the essential features of the fundamental rights provisions, including the core guarantee of equality before law (Article 27) and the prohibition of discrimination on grounds of religion, caste, sex, or place of birth (Article 28), would be part of

the basic structure. A constitutional amendment that attempted to create an explicit personal law exception to these guarantees, allowing personal law to discriminate on grounds of religion and sex without constitutional constraint, would therefore potentially be challengeable as a violation of the basic structure.

This analysis has significant strategic implications. It means that the fundamental rights framework for challenging Hindu personal law is constitutionally entrenched in a way that makes it difficult for future governments to reverse. Even if a hostile government were to enact constitutional amendments weakening the equality guarantees as applied to personal law, those amendments would themselves be subject to basic structure challenge. The constitutional litigation strategy for Hindu law reform is therefore not merely reactive, defending against legislative regression, but potentially offensive, using the basic structure doctrine to establish that the constitutional commitment to equality in the personal law domain is irreversible.

CHAPTER TEN: COMPARATIVE CONSTITUTIONAL ANALYSIS: INDIA, SOUTH AFRICA, AND NEPAL

10.1 The Indian Experience: From Personal Law Exception to Constitutional Equality

The trajectory of Indian constitutional law with respect to personal law has moved, fitfully and incompletely, from the position that personal law is outside the scope of fundamental rights to the position that constitutional equality must ultimately prevail even in the domain of personal law. This movement has been driven by a combination of judicial activism, legislative reform, and sustained advocacy by women's rights organizations.

The landmark case of Shayara Bano v. Union of India (2017), in which the Indian Supreme Court struck down instant triple talaq as unconstitutional by a majority of three to two, represents the most direct application of constitutional equality norms to religious personal law in Indian history. The majority justices held that the practice of instant triple talaq was manifestly arbitrary and violated the constitutional guarantee of equality. The case is important for Bangladesh not merely as a precedent for the application of constitutional norms to personal law but as a demonstration that the Supreme Court, when it chooses to engage with the constitutional dimensions of personal law, is capable of producing transformative outcomes.

The Indian courts have also addressed Hindu personal law in constitutional terms, though less dramatically than in the Shayara Bano context. The Vineeta Sharma v. Rakesh Sharma judgment of 2020, in which the Supreme Court gave retrospective effect to the 2005 amendment to the Hindu Succession Act that granted daughters equal coparcenary rights, demonstrates the courts' capacity to interpret progressive legislative reform in a constitutionally generous way. The Indian Hindu Succession Act reforms of 1956 and 2005 together provide the most direct legislative model for the Bangladeshi reform agenda.

10.2 The South African Constitutional Court: The Bhe Judgment and Its Application

The Constitutional Court of South Africa's judgment in Bhe v. Magistrate, Khayelitsha (2004) is the single most important comparative precedent for the Bangladeshi Hindu law reform analysis. In Bhe, the Court struck down the customary law rule of primogeniture, which excluded women and non-marital children from inheriting intestate, holding that it violated the constitutional guarantees of equality and dignity.

The Court's reasoning in Bhe proceeds through several steps that are directly applicable to the Bangladeshi Dayabhaga succession analysis. First, the Court acknowledges that customary law is a legitimate and important source of law that the Constitution recognizes and must be developed. Second, it holds that this recognition does not insulate customary law from constitutional scrutiny: customary law, like any other source of law, must comply with the Constitution's fundamental rights. Third, it applies the constitutional equality guarantee to the specific rule of primogeniture and finds that it discriminates against women on grounds of sex and thereby violates the Constitution. Fourth, it provides a remedy: in the absence of adequate legislative reform, the Court itself fashions a constitutional remedy, applying the constitutional standard of equality to determine the succession outcome.

This four-step analysis maps directly onto the Dayabhaga succession context. The Dayabhaga system is a legitimate legal tradition that Bangladesh's courts have always applied. But its specific rules, particularly those limiting the widow's estate and placing daughters subordinate to male heirs, discriminate on grounds of sex in exactly the way that the Bhe Court found unconstitutional. A Bangladeshi court applying the Bhe reasoning would hold that the Dayabhaga succession rules, insofar as they discriminate on grounds of sex, violate Articles 27 and 28 of the Constitution and must be either reformed through legislation or remedied directly by the court in the absence of legislation.

10.3 Nepal's National Civil Code 2017: The Legislative Alternative to Judicial Transformation

Nepal's approach to reforming its personal law system provides an important alternative model to the judicial constitutional transformation approach. Rather than relying primarily on courts to apply constitutional norms to reform personal law, Nepal undertook a comprehensive legislative codification through the National Civil Code of 2017, which replaced the earlier Muluki Ain and established a unified civil code for personal law matters that incorporated strong equality protections.

The Nepalese Civil Code of 2017 is significant for several reasons. It demonstrates that comprehensive legislative reform of personal law, including Hindu personal law, is politically achievable in a predominantly Hindu country with strong conservative religious traditions. It provides a specific legislative model for the codification of personal law matters in a manner that is consistent with constitutional equality guarantees. And it demonstrates that legal reform need not be experienced as an attack on religious tradition if it is framed as a modernization and clarification of existing law rather than an abolition of it.

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The Nepalese example is particularly relevant to Bangladesh because of the comparative demographic and political situations. Nepal is a constitutionally secular state with a large Hindu majority. Bangladesh is a state with a Muslim majority and a Hindu minority. In Nepal, the Hindu personal law reform proceeded with the support of the majority community because it was framed as a Hindu modernization project. In Bangladesh, the Hindu personal law reform is necessarily a minority community initiative because the community in question is a minority. This difference in political context means that the Nepalese legislative model cannot be directly replicated in Bangladesh, but its substantive content, which represents a carefully thought-through codification of modern Hindu personal law, provides invaluable guidance for the content of a reformed Hindu personal law code.

CHAPTER ELEVEN: THE BASIC CONSTITUTIONAL MINIMUM FOR HINDU LAW REFORM: WHAT EQUALITY REQUIRES

11.1 Deriving the Constitutional Minimum from the Equality Provisions

The constitutional analysis developed in this Part makes it possible to identify a constitutional minimum for Hindu personal law reform: the specific changes that the constitutional equality guarantees require as a matter of constitutional law, not merely as a matter of policy preference. This constitutional minimum provides a floor below which reform cannot stop and still claim to honour the Constitution's commitments.

The constitutional minimum for Hindu marriage law reform follows from the combined operation of Articles 27 and 28. The maintenance of a marriage system that provides no right of divorce for Hindu women, while Muslim women have available several mechanisms for marriage dissolution, constitutes discrimination on grounds of religion that Article 28 prohibits. The constitutional minimum therefore requires that Hindu women have available a right to marriage dissolution on grounds that are comparable to those available to Muslim women.

The constitutional minimum for Hindu succession law reform follows from Articles 27, 28, and 42. The Dayabhaga rules that limit the widow's estate to a qualified life interest rather than full ownership, and that place daughters in a secondary position relative to sons in the inheritance hierarchy, constitute discrimination on grounds of sex that Article 28 prohibits. The constitutional minimum therefore requires that Hindu women have full inheritance rights equal to those of Hindu men, both in the sense of receiving an equal share of the estate and in the sense of holding absolute ownership rather than a limited estate.

The constitutional minimum for Hindu adoption law reform follows from Article 27's equality guarantee. The rules of Hindu adoption that restrict the right to adopt to males and that impose caste restrictions on adoption constitute discrimination on grounds of sex and caste that Article 27 and Article 28 prohibit. The constitutional minimum requires that both men and women may adopt, and that caste restrictions on adoption have no legal force.

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The constitutional minimum for Hindu maintenance law reform follows from Article 28 and from the right to life protected by Article 31. The inadequacy of maintenance rights for Hindu women, particularly the inability to claim maintenance after divorce because there is no divorce, constitutes a failure of the legal system to provide the minimum material security necessary for the exercise of the rights that the Constitution guarantees. The constitutional minimum requires an adequate maintenance system that is not contingent on the continued existence of an unhappy or abusive marriage.

11.2 Beyond the Constitutional Minimum: The Full Reform Agenda

The constitutional minimum sets the floor of reform, but the analysis of this treatise has consistently argued that the floor is not the ceiling. Constitutional law sets minimum standards. Legislative reform should aim higher. The goal is not merely to bring Hindu personal law into formal compliance with constitutional equality guarantees but to create a personal law system that actively promotes the flourishing of Hindu individuals and families, that respects their autonomy and dignity, and that serves their actual needs rather than the requirements of a social order that was designed for a very different time and place.

This distinction between the constitutional minimum and the optimal policy is important because it bears on the political strategy for reform. Constitutional litigation can achieve the minimum: it can force the repeal or reform of specific rules that are directly incompatible with constitutional equality. But constitutional litigation cannot design the comprehensive reformed personal law system that Hindu citizens deserve. That is a legislative task, requiring democratic deliberation, community consultation, comparative law analysis, and the kind of sustained political attention that produces good law rather than merely constitutional law.

CHAPTER TWELVE: THE PATH TO A HINDU CODE: CONSTITUTIONAL MANDATE, LEGISLATIVE DESIGN, AND POLITICAL STRATEGY

12.1 The Constitutional Mandate for a Hindu Code

The analysis developed throughout this Part establishes a constitutional mandate for what might be called a Hindu Code for Bangladesh: a comprehensive statutory framework, analogous to the Indian Hindu Code Acts of 1955 and 1956, that modernizes and codifies Hindu personal law in a manner consistent with constitutional equality guarantees.

This constitutional mandate flows from the combined operation of three constitutional provisions. Article 27's equality guarantee requires that the legal rules governing Hindu citizens' most intimate personal affairs be brought into conformity with the equal treatment that it mandates. Article 28's non-discrimination provision requires that those rules not discriminate on grounds of religion, caste, or sex. And the directive principles of state policy, particularly Article 19's direction to remove social and economic inequality, impose an affirmative duty on the state to act, not merely a negative duty to refrain from discriminating.

The constitutional mandate for a Hindu Code is strengthened by the July Charter's commitment to expanding fundamental rights and by the referendum mandate endorsed by sixty-eight percent of voters in February 2026. A constitution reformed to expand fundamental rights is a constitution in which the constitutional mandate for Hindu personal law reform becomes more, not less, demanding. The new BNP government, which is obligated to implement the constitutional reforms endorsed by the referendum, faces a constitutional mandate for comprehensive action on Hindu personal law that no previous government has faced in the same terms.

12.2 The Model Legislation: Drawing on India, Nepal, and International Standards

The design of a comprehensive Hindu Code for Bangladesh should draw on three primary sources: the Indian Hindu Code Acts of 1955 and 1956 as amended through 2005, the Nepalese National Civil Code of 2017, and the international human rights standards established by CEDAW, the ICCPR, and related instruments.

From the Indian Hindu Code Acts, the Bangladeshi reform should take the basic legislative framework of comprehensive statutory codification across four subject areas: marriage, succession, guardianship, and maintenance. The specific rules of the Indian legislation should not be replicated without adaptation, since they were designed for a different legal context and some of them have themselves been criticized as insufficiently reformist. But the structural approach of the Indian legislation, which replaced the uncodified textual and customary law with a clear and comprehensive statutory system, is the right model for Bangladesh.

From the Nepalese National Civil Code, the Bangladeshi reform should take the approach of creating a unified and internally consistent body of personal law that can be understood and applied by courts and non-specialist lawyers without requiring expertise in Sanskrit textual tradition. The Nepalese Code's treatment of succession, which establishes clear and equal inheritance rights for women and men, provides a specific legislative model for the reform of the Dayabhaga succession rules.

From the international human rights standards, the Bangladeshi reform should take the substantive equality requirements that CEDAW and the ICCPR establish for family law and property law. The CEDAW Committee's General Recommendations on marriage and family relations, inheritance rights, and the rights of rural women provide detailed guidance on what constitutionally and internationally acceptable personal law must look like in terms of the substantive outcomes it produces for women.

12.3 The Proposed Hindu Code of Bangladesh: Outline of Key Provisions

Part One of the proposed Hindu Code should deal with marriage. It should maintain the sacramental and religious character of Hindu marriage while adding civil law dimensions that protect the parties. It should establish clear minimum conditions for a valid marriage including mutual consent, minimum ages consistent with international standards, and the prohibition of dowry demands. It should provide for the registration of all Hindu marriages, building on the

Hindu Marriage Registration Act of 2012 but making registration compulsory rather than merely optional. It should establish grounds for the dissolution of Hindu marriage by divorce, including irretrievable breakdown of marriage, cruelty, desertion, mental illness, and conversion to another religion. And it should provide for maintenance and property division upon dissolution that protects the economic interests of the economically weaker party.

Part Two of the proposed Code should deal with succession and inheritance. It should abolish the concept of the limited estate and replace it with absolute ownership for all heirs regardless of their sex. It should establish a clear order of succession that gives sons and daughters equal rights, that gives widows equal rights with sons, and that eliminates the preference for male over female heirs that characterizes the Dayabhaga system in multiple ways. It should preserve the right of testamentary succession, which the Dayabhaga system already recognizes, while establishing minimum rights for certain heirs that cannot be defeated by testamentary disposition. And it should provide clear rules for the partition of joint family property that protect the interests of all family members including female members.

Part Three of the proposed Code should deal with adoption. It should allow both men and women to adopt, whether married or single. It should eliminate caste restrictions on adoption. It should establish clear procedural requirements for valid adoptions that protect the interests of the adoptee. And it should provide for the registration of adoptions to create a clear evidentiary record.

Part Four of the proposed Code should deal with guardianship and minority. It should establish the welfare of the child as the paramount consideration in all guardianship determinations. It should give mothers and fathers equal standing as natural guardians of their children, removing the preference for the father that characterizes the uncodified Hindu law. And it should establish clear procedures for guardianship determination by courts that allow for the child's voice to be heard.

Part Five of the proposed Code should deal with maintenance. Building on the framework analyzed in Part Eight of this treatise, it should establish comprehensive maintenance rights for wives, children, parents, and other dependents that are not contingent on the continued existence of a valid marriage. It should provide clear procedures for claiming and enforcing maintenance orders. And it should establish maintenance amounts that are adequate to provide genuine economic security rather than merely nominal support.

12.4 The Political Strategy for Hindu Code Enactment

The political strategy for enacting a comprehensive Hindu Code in Bangladesh must reckon honestly with the obstacles analyzed throughout this treatise. The most formidable obstacle is not, as is sometimes assumed, the opposition of the Hindu community itself to reform. Survey research and community consultations conducted by civil society organizations have consistently found that the majority of Bangladeshi Hindus, and particularly Hindu women, support reform of the personal law system. The obstacles lie elsewhere: in the political calculation of major parties that prioritizes avoiding controversy over delivering justice, in the Islamist opposition that

frames any reform of personal law as an attack on religious values, and in the bureaucratic inertia that resists any change to established legal arrangements.

The strategy for overcoming these obstacles must work on multiple fronts simultaneously. It must develop and maintain the constitutional litigation pressure analyzed in this Part, ensuring that the cost of inaction for governments increases over time as courts begin to apply constitutional equality norms to Hindu personal law cases. It must build and sustain a civil society coalition that includes not only Hindu community organizations but also women's rights organizations, human rights organizations, legal academics, and progressive Muslim voices that recognize the justice of the reform cause. It must engage the international human rights mechanisms that provide external pressure on Bangladesh to honour its treaty obligations. And it must develop the political case for reform in terms that resonate with the majority community, framing Hindu law reform not as a minority demand but as a component of Bangladesh's commitment to being a constitutional democracy that treats all its citizens as equal members.

The February 2026 election result, which returned the BNP to power with a supermajority that it did not expect and for which it made extensive promises to minority communities, provides a window of opportunity that the reform movement must exploit. The political costs of continued inaction on Hindu law reform are higher for the new BNP government than they were for any previous government, because the democratic mandate and the constitutional framework within which it governs are more demanding of action than anything its predecessors faced.

CHAPTER THIRTEEN: THE UNIFORM CIVIL CODE DEBATE AND ITS RELEVANCE TO BANGLADESH

13.1 The Uniform Civil Code Controversy in India and Its Lessons

The debate over a Uniform Civil Code in India, which has become intensely politically charged in recent years particularly under the BJP government, provides important lessons for the Bangladeshi Hindu law reform movement. The Indian debate involves the question of whether personal law for all religious communities should be replaced by a single, unified civil code applicable to all citizens regardless of religion.

In India, the demand for a Uniform Civil Code has historically been associated with Hindu nationalist politics, which has used it as a stick to beat Muslim personal law with while implying that Hindu law is already in an acceptable state. This association has made the Uniform Civil Code demand deeply controversial among minority communities and secular progressives, who see it as a majoritarian project rather than a genuine commitment to gender equality and legal uniformity.

The Bangladeshi situation is almost the mirror image of the Indian one. In Bangladesh, it is the Hindu minority's personal law that is most in need of reform, not the Muslim majority's. A demand for a Uniform Civil Code in Bangladesh would be a demand by the Hindu minority that

the state apply uniform legal standards to all communities, which is exactly the reverse of the Indian political dynamic where it is the Hindu majority demanding uniformity. This different political dynamic is potentially more favorable to the Uniform Civil Code argument in Bangladesh, since it cannot be read as majoritarian in the way that it can in India.

However, the Uniform Civil Code as a political demand is probably not the most strategically effective way of framing the Hindu law reform agenda in Bangladesh. The more immediately achievable and politically defensible goal is the reform of Hindu personal law specifically, bringing it into conformity with constitutional equality standards while leaving the personal law systems of other communities for separate consideration. This targeted approach has the advantage of being directly responsive to the specific injustice suffered by the Hindu community without requiring the more politically contentious resolution of the question of whether a single uniform civil code should replace the entire system of religious personal law in Bangladesh.

13.2 The Special Marriage Act and Its Limitations

The Special Marriage Act of 1872, which applies to interfaith marriages and to persons who choose to marry outside their personal law, provides a technically available alternative for Hindu couples who wish to contract marriages under a secular civil framework. However, the Special Marriage Act in Bangladesh has a significant limitation that makes it practically useless as an alternative to Hindu personal law for most Hindu couples.

Interfaith couples may be married under the Special Marriage Act of 1872. However, under the Act, couples are required to renounce their faiths in order to marry. USCIRF This requirement of faith renunciation is not present in the Special Marriage Acts as they operate in India, where the statute was amended to remove the requirement. The Bangladeshi version of the Act thus places Hindu couples who wish to use it in the position of having to formally renounce their Hindu identity in order to access the civil marriage regime, which is an unacceptable price that most will be unwilling to pay.

The reform of the Special Marriage Act to remove the faith renunciation requirement would provide an immediate legislative improvement that does not require the comprehensive reform of the Hindu personal law system. It would create an opt-in civil marriage regime that Hindu couples could use if they preferred, without requiring them to abandon their Hindu identity. This reform would be symbolically important as a signal of the state's willingness to treat Hindu citizens with equal respect, and practically useful as an alternative for the many Hindu couples who are caught in impossible situations under the existing personal law.

CHAPTER FOURTEEN: CONSTITUTIONAL IDENTITY, SECULARISM, AND THE FUTURE OF HINDU LAW IN A REFORMING BANGLADESH

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14.1 Bangladesh's Constitutional Identity: The Tension Between Secularism and Islam

Bangladesh's constitutional identity in April 2026 is marked by a fundamental tension between its secular foundations and its Islamic state religion, a tension that the July Charter and the February 2026 referendum have not resolved. The Constitution, as it now stands, is simultaneously a secular document in its fundamental rights provisions and an Islamic document in its declaration that Islam is the state religion. This constitutional duality creates ongoing uncertainty about the ultimate direction of Bangladesh's legal order.

For the Hindu minority, this constitutional tension is of immediate practical significance. A Bangladesh that resolves the tension in the direction of greater secularism is a Bangladesh more likely to produce the comprehensive Hindu personal law reform that this treatise advocates. A Bangladesh that resolves the tension in the direction of Islamization is a Bangladesh in which even the existing inadequate protections for the Hindu minority may be eroded further.

The February 2026 constitutional referendum, which endorsed the July Charter's reform agenda including the expansion of fundamental rights, suggests that Bangladesh's political trajectory is, at least in the immediate term, moving toward a more rights-based constitutional framework rather than away from it. The secularism provisions of the Charter, combined with the expanded fundamental rights, create a constitutional moment in which the case for comprehensive Hindu law reform is stronger than at any previous point in Bangladesh's history.

The seminar at Dhaka University on the Constitution's fifty-third anniversary heard legal experts argue that we must envision a state where every person can proudly and honestly assert their own identity, and that references in the 1972 Constitution to a singular Bengali identity, and the later adoption of a state religion, have marginalized indigenous peoples, Dalits, and religious minority communities. (Dhaka Tribune) This legal expert consensus, expressed at Bangladesh's most prestigious legal academic forum, reflects a growing recognition within Bangladesh's intellectual community that the constitutional treatment of religious minorities requires fundamental rethinking.

14.2 The Constitutional Recognition of Legal Pluralism and Its Limits

The maintenance of separate religious personal law systems in Bangladesh represents a form of legal pluralism: the coexistence of multiple legal systems operating simultaneously within the same territorial jurisdiction. Legal pluralism, as a theoretical framework, has been extensively analyzed by legal anthropologists and socio-legal scholars including John Griffiths, Sally Engle Merry, and in the South Asian context, Marc Galanter and Werner Menski.

Legal pluralism as a descriptive fact is uncontroversial: multiple legal systems do coexist in Bangladesh, and describing this reality is important for understanding how law actually operates in Bangladeshi society. Legal pluralism as a normative ideal, the view that this multiple coexistence is desirable and should be maintained, is a much more contested proposition. The normative case for legal pluralism typically rests on arguments about community autonomy,

cultural diversity, and the importance of allowing different communities to order their internal affairs according to their own values.

The limits of legal pluralism as a normative ideal in the Hindu personal law context are established by the same considerations that limit the personal law exception more generally. Legal pluralism cannot be used to justify legal arrangements that systematically deny the equality and dignity of individual members of the legally plural communities. The autonomy of the Hindu community as a community does not justify the subordination of Hindu women as individuals. Legal pluralism must operate within constitutional constraints, and the constitutional constraints on unequal treatment of citizens on grounds of religion and sex are non-negotiable.

The concept of what Boaventura de Sousa Santos calls "emancipatory legal pluralism," as distinct from conservative legal pluralism, provides a useful framework for thinking about the relationship between legal pluralism and constitutional equality in the Hindu law context. Emancipatory legal pluralism recognizes the value of diverse legal traditions while insisting that diversity must be harnessed in the service of emancipation rather than subordination. The goal is not to preserve existing legal traditions in their current form but to transform them in ways that serve the genuine interests of all community members, including the most vulnerable.

CHAPTER FIFTEEN: RECENT ACADEMIC DEVELOPMENTS IN CONSTITUTIONAL THEORY AND THEIR BEARING ON HINDU LAW REFORM

15.1 The Decolonial Constitutional Turn

The most significant recent development in constitutional theory as it applies to the South Asian context is what might be called the decolonial constitutional turn: a growing insistence among constitutional scholars that the constitutional frameworks of formerly colonized societies need to be examined and reformed through the lens of decolonization, not merely through the lens of human rights universalism.

The decolonial approach, associated with scholars including Achille Mbembe, Boaventura de Sousa Santos, and in the South Asian legal context Walter Mignolo and Upendra Baxi, holds that the dominant constitutional frameworks of formerly colonized societies are themselves products of colonial knowledge production. They reflect the assumptions, categories, and priorities of the colonial administrators who shaped them, and they must be critically examined and reformed from the standpoint of the communities that colonialism marginalized.

Applied to the Hindu law context in Bangladesh, the decolonial approach suggests that what we have inherited is not simply "traditional Hindu law" but colonial Hindu law: a construction shaped by British administrative priorities, British epistemological assumptions about what Hindu tradition means, and British institutional frameworks that privileged certain texts, certain interpretations, and certain social arrangements over others. The decolonization of Hindu law means not merely preserving this colonial inheritance but critically interrogating it to expose its

colonial construction and reforming it from the standpoint of the Hindu communities whose interests it purports to serve.

This decolonial analysis has several important implications. It supports reform because it exposes the colonial character of the arrangements being reformed: we are not proposing to destroy ancient Hindu tradition but to decolonize a colonial construction that falsely presents itself as ancient Hindu tradition. It requires community participation in the reform process, because decolonization means that the communities affected must be empowered to shape the law that governs them rather than having reform imposed by an external authority, even a well-intentioned one. And it connects the Hindu law reform agenda to the broader project of democratic self-determination that the Bangladeshi state proclaims as its foundational commitment.

15.2 The Capabilities Approach and Constitutional Design

The capabilities approach, developed by Amartya Sen and Martha Nussbaum and applied to constitutional design by scholars including Rosalind Dixon and Tom Ginsburg, provides a framework for evaluating constitutional arrangements by reference to whether they support or undermine the real capabilities of citizens to live flourishing lives. Constitutional design that takes the capabilities approach seriously asks not merely whether constitutional provisions formally guarantee certain rights but whether the institutional arrangements supported by the constitution actually enable citizens to exercise those rights in ways that contribute to genuine human flourishing.

The application of the capabilities approach to the Hindu personal law question in Bangladesh produces a damning evaluation of the existing system. The Dayabhaga rules limiting women's inheritance rights undermine the capability of economic self-reliance: a woman who cannot inherit on equal terms with her brother, and who has no independent source of income or property, is a woman whose practical freedom is severely constrained regardless of what the constitution formally guarantees. The absence of Hindu divorce law undermines the capability of practical reason and affiliation: a woman who cannot exit a destructive marriage is a woman whose capacity to shape her own life in accordance with her own values is severely constrained. The inability to provide adequate maintenance undermines the capability of bodily health and integrity: a woman who depends on the goodwill of relatives for her material survival is a woman who cannot make the independent choices necessary for genuine agency.

Constitutional design that takes the capabilities approach seriously would therefore not merely include formal guarantees of equality and non-discrimination. It would include institutional arrangements specifically designed to ensure that those formal guarantees translate into genuine capabilities: legal aid systems that enable Hindu women to access the courts, legal literacy programs that ensure Hindu women know their rights, court procedures that are accessible and affordable, and enforcement mechanisms that ensure that court orders for maintenance and inheritance are actually complied with.

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15.3 The Dialogic Constitutional Theory and the Role of Civil Society

The dialogic theory of constitutionalism, associated most prominently with scholars including Peter Hogg, Allison Thornton, and in its more developed form by Rosalind Dixon and David Landau, holds that constitutional transformation is best understood not as a unilateral imposition of constitutional norms by courts but as a dialogue between courts, legislatures, and civil society that produces constitutional meaning through sustained interaction over time.

Applied to the Hindu law reform context in Bangladesh, dialogic constitutionalism suggests that the path to reform runs through a sustained and multi-directional conversation between the Supreme Court, the Parliament, Hindu community organizations, women's rights advocates, human rights bodies, and international institutions. Courts provide constitutional interpretations that put pressure on the legislature to act. Legislatures respond with reform legislation that attempts to address constitutional concerns while remaining politically feasible. Courts evaluate whether the legislative response adequately addresses the constitutional mandate and provide further guidance if it does not. Civil society organizations participate in this dialogue by framing issues, mobilizing constituencies, and providing courts and legislatures with information about the real-world effects of legal rules.

This dialogic model is more realistic than a model that relies on courts alone or legislatures alone to produce reform. It recognizes that constitutional transformation is a political process as well as a legal one, and that the most durable reforms are those produced through sustained democratic deliberation rather than imposed by judicial fiat. At the same time, it assigns courts an important role in maintaining the pressure for reform even when political momentum is insufficient to produce legislative action on its own.

CHAPTER SIXTEEN: SYNTHESIS AND THE WAY FORWARD

16.1 The Constitutional Case: Summary and Prescription

The constitutional case for comprehensive Hindu law reform in Bangladesh, developed across this Part, rests on three converging lines of argument that together constitute a powerful and, in the judgment of this treatise, irrefutable constitutional mandate.

The first line of argument is derived from the fundamental rights provisions of the Constitution. Articles 27 and 28 guarantee equality and non-discrimination to all citizens. The Dayabhaga personal law system violates these guarantees by applying rules to Hindu citizens that discriminate on grounds of their religion and sex. The personal law exception that has historically shielded these violations from constitutional scrutiny is doctrinally weak and normatively indefensible, as the comparative jurisprudence of India, South Africa, and other Commonwealth jurisdictions demonstrates. Constitutional litigation based on the fundamental rights provisions can achieve the judicial invalidation of specific discriminatory rules and can create pressure for comprehensive legislative reform.

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The second line of argument is derived from the transformative constitutionalism framework. Bangladesh's constitution is committed not merely to preventing discrimination but to transforming the conditions that produce it. The Dayabhaga personal law system is one such condition. It structurally produces inequality and subordination for Hindu women, and it has done so for as long as it has been operative. Transformative constitutionalism requires the state to affirmatively address these structural conditions, not merely to refrain from explicitly discriminating. The July Charter of 2025 and the February 2026 referendum have strengthened the transformative constitutional mandate by expanding fundamental rights and creating a democratic framework for comprehensive constitutional reform.

The third line of argument is derived from international human rights law. Bangladesh's obligations under CEDAW, the ICCPR, the CERD, and other instruments require it to eliminate discriminatory personal law and to ensure equal rights for women in all matters relating to family, property, and legal capacity. The CEDAW Committee's repeated recommendations on personal law reform, the UPR recommendations on minority rights, and the reports of Special Rapporteurs on relevant subject areas all converge on the conclusion that Bangladesh's current treatment of Hindu personal law is incompatible with its international obligations.

16.2 A Legislative Roadmap for the New Parliament

The new BNP government, with its two-thirds parliamentary majority and its constitutional obligation to implement the July Charter's expanded fundamental rights within 180 days, has an unprecedented opportunity to address the constitutional gap in Hindu personal law. The following legislative roadmap suggests a phased approach that is both constitutionally adequate and politically feasible.

In the first phase, the Parliament should enact immediate measures that do not require comprehensive legislation. These include: the amendment of the Special Marriage Act to remove the faith renunciation requirement; the strengthening of the Hindu Marriage Registration Act to make registration compulsory rather than merely optional; the enactment of interim maintenance provisions that protect Hindu women in cases of marital breakdown pending comprehensive personal law reform; and the enactment of preliminary provisions of the Hindu Property Security and Restitution Act proposed in Part Nine.

In the second phase, the Parliament should establish a Law Commission specifically tasked with producing draft legislation for a comprehensive Hindu Personal Law Code. The Commission should include both legal experts and Hindu community representatives, including substantial representation of Hindu women. It should consult widely across the Hindu community, reaching beyond the urban educated elite to include rural and marginalized communities whose experience of the personal law system is most severe. And it should produce draft legislation within a specified time frame, with mechanisms for public comment and parliamentary consideration.

In the third phase, the Parliament should enact the comprehensive Hindu Personal Law Code produced by the Commission, incorporating any modifications found necessary in the light of

public consultation and parliamentary debate. The Code should come into force with adequate transition provisions, legal aid support, and judicial training to ensure that it can be effectively implemented.

This three-phase approach acknowledges the political complexity of comprehensive personal law reform while establishing a clear trajectory and timeline for action. It gives the new government an opportunity to demonstrate its constitutional seriousness without requiring it to deliver a comprehensive reform instantaneously. And it builds the political infrastructure for reform through the consultative processes of the second phase in a way that will make the final legislation more legitimate and more durable.

CONCLUSION TO PART TEN

The constitutional framework of Bangladesh, particularly as it stands after the July Charter of 2025 and the February 2026 referendum, contains the resources necessary for comprehensive Hindu personal law reform. The fundamental rights provisions prohibit the discrimination that the Dayabhaga system perpetuates. The directive principles mandate the elimination of the social and economic inequality that the system produces. The transformative constitutional mandate, strengthened by the referendum's endorsement of expanded fundamental rights, requires affirmative action to address the structural conditions of Hindu women's subordination. And the international human rights obligations Bangladesh has undertaken require it to honor the standards of equal treatment that it has formally committed to.

The obstacles to reform are political and institutional, not constitutional. The constitutional case for reform is strong and is becoming stronger as the July Charter's provisions are implemented and as the comparative jurisprudence of transformative constitutionalism continues to develop. The political obstacles are real but not insuperable: they have been overcome in India, in South Africa, and in Nepal by combinations of judicial pressure, civil society advocacy, and political leadership that is ultimately responsive to the demands of justice.

The fifteen million Hindu citizens of Bangladesh, who have been governed by an unreformed, colonial-era personal law system for the entire fifty-three year history of the republic, have waited long enough. The constitutional mandate is clear. The legislative tools are available. The international obligations are established. The comparative models are proven. What remains is the political will to act, and it is the task of this treatise, and of the broader movement for Hindu law reform in Bangladesh, to create the conditions in which that political will can emerge and translate into the comprehensive legislative action that justice has demanded for more than half a century.

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Part Ten of this treatise concludes here. Part Eleven will examine the specific legislative history of proposed Hindu Code reforms in Bangladesh from 1971 to 2026, analyzing the successive attempts at reform, why they failed, and what the political conditions for eventual success look like, with particular attention to the role of civil society organizations, diaspora advocacy, and international human rights pressure in shaping the reform debate.

PART ELEVEN

THE LEGISLATIVE HISTORY OF PROPOSED HINDU CODE REFORMS IN BANGLADESH: PROPOSALS, FAILURES, POLITICAL CONDITIONS, CIVIL SOCIETY ADVOCACY, AND THE PATH TOWARD TRANSFORMATION, 1971 TO 2026

PREFATORY NOTE TO PART ELEVEN

The preceding ten parts of this treatise have laid the philosophical, historical, doctrinal, comparative, and constitutional foundations upon which any serious account of the Hindu law reform question in Bangladesh must rest. We have examined Dharma as a jurisprudential concept, the Dayabhaga school in its textual specificity, the colonial construction of Hindu law through the apparatus of the East India Company and its judicial instruments, the nature and scope of the discrimination embedded in the unreformed personal law as it applies to marriage, inheritance, adoption, and maintenance, the comparative models offered by India and Nepal, and the constitutional mandate for reform derived from the fundamental rights provisions, the directive principles, the doctrine of transformative constitutionalism, and Bangladesh's international human rights obligations.

What we have not yet done is to examine, in granular detail, the actual legislative history of the reform question in Bangladesh itself. We have noted the absence of reform; we have diagnosed its causes in broad terms; we have pointed to the political and institutional obstacles. But the story of why Bangladesh has failed, across fifty-five years of independent statehood, to enact the comprehensive reform of Hindu personal law that justice demands is not a simple story. It is a story of competing political calculations, missed opportunities, good-faith proposals defeated by bad-faith opposition, civil society activism that achieved partial victories while falling short of comprehensive transformation, and constitutional moments that opened windows of possibility which were then closed before they could be fully exploited.

It is also, in many respects, a story about the relationship between a Muslim-majority state and its Hindu minority, about the place of the Hindu community in Bangladesh's national imagination, and about the ways in which the legal system both reflects and reproduces the political vulnerability of religious minorities. Understanding this story in its full complexity is essential to understanding what kind of reform strategy can succeed in the present moment, and why the political conditions of 2024 to 2026 represent an opportunity that is at once unprecedented and fragile.

Part Eleven examines this legislative history through seven chapters. Chapter Seventeen examines the immediate post-independence period and the first decade of missed opportunity from 1971 to 1981, asking why the new Bangladeshi state failed to take the transformative action in Hindu law reform that its founding ideals might have suggested. Chapter Eighteen examines the period of military rule and the deliberate instrumentalization of religion in national politics from 1975 to 1990, arguing that this period created structural obstacles to Hindu law reform that have never been fully dismantled. Chapter Nineteen traces the emergence of organized civil society advocacy for Hindu law reform in the period from 1990 to 2001, examining the major organizations, their strategies, their achievements, and their limitations. Chapter Twenty undertakes a detailed investigation of the proposed Hindu Code Bill and the politics of its failure across the decade from 2000 to 2010, providing what is perhaps the most granular account of a specific legislative failure available in the academic literature. Chapter Twenty-One examines the Hindu Marriage Registration Act of 2012 as a case study in partial reform, analyzing what it achieved, what it failed to achieve, and what it reveals about the political dynamics of minority law reform in Bangladesh. Chapter Twenty-Two examines the Awami League years from 2009 to 2024 as a period of paradox in which the political party most associated with Hindu minority interests governed for fifteen years without enacting the substantive legal reform that would have materially improved the lives of Hindu women. Chapter Twenty-Three examines the period from the July Revolution of 2024 through the constitutional referendum of February 2026 and the elections that followed, analyzing what the new political dispensation means for the prospects of Hindu law reform and what the new parliament must do to honor the constitutional mandate.

Throughout, this Part pays particular attention to three themes that cut across all seven chapters: the role of civil society organizations in framing and advancing the reform agenda; the role of diaspora communities in sustaining international pressure for reform; and the role of international human rights mechanisms, particularly the CEDAW Committee and the Universal

Periodic Review, in creating accountability for the gap between Bangladesh's constitutional promises and its legislative reality.

CHAPTER SEVENTEEN: THE FIRST DECADE OF STATEHOOD AND THE ARCHITECTURE OF MISSED OPPORTUNITY, 1971 TO 1981

17.1 Independence, Constitution-Making, and the Question of Religious Minorities

The People's Republic of Bangladesh came into existence in December 1971 following one of the bloodiest liberation wars of the twentieth century. In nine months of armed conflict, an estimated three million Bangladeshis were killed by the Pakistani military, millions more were displaced across the border into India, and a systematic campaign of violence, rape, and destruction was carried out against the civilian population. The liberation war was not fought, in any simple sense, as a war of religion. It was fought primarily as a war of ethnic and cultural identity, in assertion of the Bengali language and culture against the Punjabi-dominated Pakistani state's attempt to suppress them. Indeed, the initial Bengali uprising that became the liberation war drew its energy from a broadly secular Bengali nationalism that explicitly included Hindus, Muslims, Buddhists, and Christians as equal members of a common Bengali nation.

This founding moment created both an opportunity and an expectation. The opportunity was for a genuinely pluralist constitutional settlement that would protect the rights of religious minorities, including the Hindu minority, through substantive legal guarantees that went beyond mere formal equality. The expectation, shaped by the secular nationalist ideology that had animated the liberation struggle, was that the new state would distinguish itself from the religiously defined Pakistan it had replaced by establishing a genuinely secular legal order in which citizens of all faiths would be treated as equal before the law.

The Constitution of Bangladesh, adopted in November 1972, gave formal expression to these aspirations. Its foundational principles included democracy, socialism, secularism, and nationalism. The secularism principle in the original 1972 Constitution was understood not merely as separation of religion and state but as the positive commitment to equal treatment of all citizens regardless of religion, and as a prohibition on the use of religion for political purposes. Article 28 of the Constitution prohibited discrimination on grounds of religion, race, caste, sex, or place of birth. Article 41 guaranteed freedom of religion. The constitutional language was, on its face, a powerful framework for the protection of religious minority rights.

But constitutions are made of words, and words require institutions, political will, and sustained enforcement to translate into lived reality. The new Bangladeshi state, in 1972 and the years immediately following, faced challenges of such magnitude that the reform of Hindu personal law was simply not a priority. The immediate tasks of state-building were overwhelming: establishing administrative infrastructure across a devastated country, rehabilitating millions of displaced persons, securing international recognition and aid, and managing the complex

relationship with India, which had been instrumental in the liberation but whose continued influence was a source of both gratitude and anxiety in the new republic.

Moreover, the political leadership of the new state, dominated by the Awami League and its founding leader Sheikh Mujibur Rahman, had emerged from a national liberation movement whose primary ideological commitments were to Bengali nationalism and democratic socialism rather than to the specific legal reform of any particular community's personal law. The Hindu community in Bangladesh, which had suffered disproportionately during the liberation war both because of Pakistani forces' targeting of Hindus and because of the flight of a significant portion of the Hindu population across the border, was understood by the Awami League as a core constituency whose loyalty could be assumed without the specific political investment that controversial legislative reform would require.

This combination of overwhelming state-building challenges, leadership priorities oriented toward macro-level political and economic transformation, and the assumption that Hindu loyalty could be secured without specific legal action created the structural conditions for the first decade's missed opportunity. The 1972 Constitution provided the framework for reform; the political will and institutional attention to execute reform were simply absent.

17.2 The Hindu Community in the Immediate Post-Liberation Period

The demographic and social situation of the Hindu community in Bangladesh in 1971 and the years immediately following was one of profound vulnerability. The pre-partition census of 1941 had recorded approximately twenty-eight percent of the Bengal population as Hindu. By the time of Bangladesh's independence in 1971, the proportion had fallen to roughly fifteen percent, a decline driven primarily by the mass migrations associated with partition in 1947 and the communal violence that preceded and followed it. The liberation war of 1971 accelerated this demographic contraction dramatically: hundreds of thousands of Hindus fled to India during the conflict, and many did not return after liberation.

Those who remained faced legal vulnerabilities that the new state did nothing to address. Among the most significant was the continuing operation of what had been the Enemy Property Act of 1965, enacted by the Pakistani government to designate the properties of citizens who had emigrated to India as "enemy property" subject to government acquisition. After liberation, this act was formally replaced by the Vested Property Act of 1974, which continued to allow the government to vest in itself property belonging to persons who had "left Bangladesh" and extended to property that had been acquired under the Enemy Property Act. In practice, the Vested Property Act became a mechanism through which powerful local actors, often with political connections, used accusations of emigration or abandonment to seize Hindu-owned land. The legal ambiguity of who qualified as having "left Bangladesh" was exploited systematically to dispossess Hindu families who had fled temporarily during the war but had returned, or whose members had emigrated in search of economic opportunity, or who had simply attracted the covetous attention of more powerful neighbors.

The Vested Property Act and its administration represent, in important respects, a paradigm case for understanding the relationship between personal law reform and the broader question of Hindu legal vulnerability in Bangladesh. The failure to reform Hindu personal law does not exist in isolation; it is part of a broader pattern of legal neglect and legal instrumentalization that has left the Hindu community exposed to dispossession and discrimination through multiple legal channels simultaneously. The Dayabhaga inheritance rules that deny daughters equal rights in their fathers' property interact with the Vested Property Act to compound Hindu women's vulnerability: a woman who cannot inherit on equal terms has fewer assets with which to defend her family's remaining property against appropriation, fewer resources to pursue litigation, and greater dependence on male relatives whose own precarious position may compromise their ability to protect her interests.

Understanding this interconnection is essential to understanding why Hindu personal law reform must be understood not merely as a matter of private family law but as a matter of the community's collective security and its capacity to survive as a viable minority in an increasingly challenging political environment.

17.3 Sheikh Mujibur Rahman and the Political Economy of Minority Rights

Sheikh Mujibur Rahman, who served as Bangladesh's first Prime Minister and subsequently its President until his assassination in August 1975, was in many respects the most genuinely committed of Bangladesh's post-independence leaders to the ideal of communal equality. His government's policies toward the Hindu minority were broadly protective: the secularism principle in the 1972 Constitution was a genuine expression of his political convictions, and his government took meaningful steps to distance itself from the religious nationalism of Pakistan. The abolition of the Muslim Family Laws Ordinance of 1961 from formal primacy, the establishment of secular educational institutions, and the removal of explicitly religious qualifications from public life all represented genuine departures from the Pakistani legal order.

But even in Mujibur Rahman's government, the reform of Hindu personal law was not on the agenda. This absence is striking and deserves careful analysis. Several explanations present themselves, and the reality is probably some combination of all of them.

The first explanation is political economy. The Hindu community in Bangladesh in the early 1970s, however sympathetic its leadership's ideology was to Hindu rights, could not organize the kind of political pressure that would have been necessary to put personal law reform on the legislative agenda. The community was numerically small, geographically dispersed, economically vulnerable, psychologically traumatized by the violence of the liberation war, and in many cases still managing the practical and legal consequences of the Vested Property Act. The organizational infrastructure that might have mobilized effective advocacy for legislative reform simply did not exist in the early 1970s.

The second explanation is ideological. The secularism of Mujibur Rahman's government was primarily a negative secularism: a commitment to separating religion from politics, to not having the state endorse or enforce Islamic law, and to treating citizens of different faiths formally

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equally. It was not a positive secularism that recognized substantive differences in the legal treatment of different communities and sought actively to eliminate those differences. The Awami League's understanding of minority rights was, in this period, primarily about equal citizenship and protection from communal violence rather than about the specific legal reforms that would have been necessary to make that equality substantive in the domain of personal law.

The third explanation is institutional. The new Bangladeshi state lacked both the institutional capacity and the legal expertise necessary to undertake the kind of comprehensive codification and reform of Hindu personal law that would have been required. The Law Commission, which would have been the natural institutional vehicle for such reform, was in its infancy. The academic study of Hindu law in Bangladeshi universities was minimal. The legal profession lacked the specialized expertise in Hindu law that would have been necessary to draft comprehensive reform legislation. The infrastructure of legal reform simply did not exist in the degree necessary.

The fourth explanation, and perhaps the most uncomfortable one, involves the dynamics of majoritarian democracy. The reform of Hindu personal law, even when supported by Hindu community representatives, was potentially controversial with Muslim constituencies if framed in certain ways. The perception that the government was changing religious laws for a minority community could be instrumentalized by political opponents to attack the government on religious grounds. In the context of a political system in which the vast majority of voters were Muslim, and in which questions of religious identity had been politically charged since at least the partition of 1947, the political calculus of a government focused on consolidating a broad coalition included an incentive to avoid controversies that could be characterized as interference with religious law even when the law in question was the law of a minority community.

This fourth explanation becomes more rather than less significant as we trace the history of the following decades, and it will recur throughout this Part as a persistent structural obstacle to Hindu personal law reform.

17.4 The Constitutional Framework and Its Unexploited Potential

The 1972 Constitution provided, as noted, a powerful formal framework for challenging discriminatory personal law. Article 27 guaranteed equality before the law and equal protection of the law to all citizens. Article 28 prohibited discrimination on grounds of religion, race, caste, sex, or place of birth. Article 31 guaranteed the right to protection of the law and the right not to be treated in a manner inconsistent with this right except as required by law. Article 44 guaranteed the right to move the High Court for enforcement of the fundamental rights contained in Articles 27 through 43.

What is striking, in retrospect, is how little use was made of these constitutional provisions in the first decade of Bangladesh's existence to challenge the discriminatory features of Hindu personal law. The High Court of Bangladesh, established under the 1972 Constitution as the successor to the High Court of East Pakistan, inherited a substantial body of Hindu law jurisprudence from

the colonial period and the Pakistani era. But the early years of the new republic saw little constitutional litigation directed at the discriminatory aspects of that law.

Several reasons explain this absence of constitutional challenge. The first is practical: constitutional litigation is expensive, time-consuming, and requires specialized legal representation that was not readily available to rural Hindu women, who were the primary victims of the discriminatory inheritance and maintenance rules. The second is doctrinal: the scope of constitutional challenge to personal law was uncertain, and there was a well-established principle in the jurisprudence of the subcontinent that personal law rules, being part of the community's religious law, might be exempt from constitutional scrutiny under the freedom of religion provisions. The third is strategic: even if constitutional litigation succeeded in striking down specific discriminatory rules, the resulting gap in the law might be filled by even less favorable judicial constructions rather than by the kind of comprehensive statutory reform that was really needed. A court that struck down the Dayabhaga inheritance rules as unconstitutional without a statutory framework to replace them would leave Hindu women in a legal void worse than the imperfect rules it had struck down.

The unexploited potential of the 1972 Constitution in the domain of Hindu personal law reform is a recurring theme in the legal history of the period. The constitution provided the tools; the political will, institutional capacity, and strategic conditions for using them effectively were not present.

17.5 The Assassination of Mujibur Rahman and Its Consequences

On the fifteenth of August 1975, Sheikh Mujibur Rahman was assassinated in a military coup. His entire family, with the exception of two daughters who were abroad at the time, was killed along with him. The coup inaugurated a period of military rule, counter-coups, and political instability that fundamentally transformed the trajectory of Bangladesh's political development and had profound consequences for the situation of religious minorities, including the prospects for Hindu personal law reform.

The immediate aftermath of the assassination was characterized by political chaos and rapid governmental change. Several successive governments attempted to stabilize the country in the months following the coup before General Ziaur Rahman emerged as the dominant figure. Ziaur Rahman, who formalized his control as President of Bangladesh in 1977, represented a fundamentally different political tradition from Mujibur Rahman. Where Mujibur had been the product of the secular Bengali nationalist movement, Zia came from a military background with no deep ideological commitment to Bengali secularism. His political project involved the consolidation of a new political coalition, the construction of the Bangladesh Nationalist Party in 1978, and the search for a legitimating ideology that could distinguish his government from the Awami League tradition.

The consequences of this political shift for religious minorities were not immediately catastrophic, but they were significant and cumulative. Zia's government began the process of revising the constitutional framework that had provided, however inadequately in practice, a

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formal basis for minority protection. Most significantly, the Fifth Amendment to the Constitution, passed in 1979, retrospectively validated all the changes made to the constitution during the period of military rule, including the removal of secularism as a founding principle and its replacement with "absolute trust and faith in the Almighty Allah." This constitutional change was not merely symbolic: it reoriented the fundamental normative framework of the state in a direction that was inherently less hospitable to claims by religious minorities that their communal laws should be reformed in accordance with principles of equality and non-discrimination.

The Fifth Amendment and its long shadow over Bangladeshi constitutional history will be examined in more detail in subsequent chapters. For present purposes, the crucial point is that the political conditions created by Zia's coup and constitutional revisions made Hindu personal law reform even less politically feasible in the period from 1975 to 1981 than it had been in the first four years of independence. The state was now led by a military government whose legitimating ideology drew on Islamic identity rather than secular Bengali nationalism; whose political coalition included forces that were explicitly hostile to minority rights; and whose constitutional framework had been revised in ways that made the formal legal basis for challenging discriminatory personal law weaker than it had been in 1972.

17.6 The Law Commission and the First Formal Consideration of Reform

Despite the unpromising political climate, the period from 1975 to 1981 did see the beginning of formal institutional consideration of Hindu personal law reform. The Bangladesh Law Commission, established in the early 1970s, produced its first systematic report touching on Hindu personal law in the late 1970s. The report acknowledged the discriminatory character of the Dayabhaga inheritance rules as applied to women, noted the contrast with the reforms undertaken in India by the Hindu Succession Act of 1956, and recommended that Bangladesh undertake a comprehensive review of Hindu personal law with a view to codification and reform.

The Law Commission's recommendation was not acted upon. It was filed, noted by the relevant ministry, and forgotten. But its significance lies not in its immediate practical consequence, which was nil, but in what it represents: the first formal acknowledgment by a Bangladeshi state institution that the unreformed character of Hindu personal law was a problem requiring legislative attention. This acknowledgment established a precedent that subsequent advocates for reform would be able to invoke, and it set the terms of a debate that would continue, with varying degrees of intensity, for the next four decades.

The Law Commission's treatment of the Hindu personal law question also reveals something important about how the issue was being framed in this period. The Commission's approach was primarily technical and comparative: it noted the divergence between Bangladesh and India, proposed codification as the appropriate remedy, and recommended specific reforms in the areas of inheritance, marriage, and maintenance. What was largely absent from the Commission's analysis was the kind of constitutional and human rights framing that would become central to the reform argument in later decades. The Commission treated Hindu law reform as a matter of modernizing an archaic legal system and bringing it into conformity with contemporary practice

elsewhere; it did not frame it primarily as a matter of constitutional equality or international human rights obligations.

This difference in framing matters because it reflects the intellectual and institutional resources available for the reform argument at different historical moments. The late 1970s were a period in which constitutional rights consciousness and international human rights discourse had not yet penetrated deeply into Bangladeshi legal culture. The argument for reform was necessarily made in the terms available, and those terms were primarily technical and comparative rather than constitutional and rights-based. The elaboration of a more powerful constitutional and rights-based argument would have to wait for the transformation of the legal culture that began in the 1980s and accelerated through the 1990s.

CHAPTER EIGHTEEN: MILITARY RULE, RELIGIOUS NATIONALISM, AND THE POLITICAL INSTRUMENTALIZATION OF MINORITY STATUS, 1975 TO 1990

18.1 The Constitutional Transformations Under Military Rule

The period of military rule in Bangladesh from 1975 to 1990, encompassing the governments of both General Ziaur Rahman and his successor General Hussain Muhammad Ershad, was characterized by a deliberate and sustained effort to reorient the ideological foundations of the Bangladeshi state in a direction that drew on Islamic identity and religious nationalism as sources of political legitimacy. This reorientation had profound consequences for the legal and political situation of religious minorities and created structural obstacles to Hindu personal law reform that have never been fully overcome.

The key constitutional changes of this period have already been mentioned in passing in earlier parts of this treatise, but they require more detailed examination here in the context of understanding the legislative history of Hindu law reform. The Fifth Amendment to the Constitution, passed by the Parliament on April 6, 1979, was a composite piece of constitutional revision that validated a series of changes made to the constitution through proclamations during the period of military rule between August 1975 and April 1979. Among the changes validated was the deletion of secularism from the list of fundamental principles in Article 8 and the addition of the phrase "absolute trust and faith in the Almighty Allah" as a foundational principle of the state. The Fifth Amendment also validated changes to the preamble of the constitution that introduced Islamic formulations in place of the secular language of the 1972 text.

These constitutional changes were not merely symbolic. They reflected and reinforced a political reorientation in which the Muslim identity of the state was emphasized in ways that inevitably redefined the status of non-Muslim citizens. The Hindu minority, which had been formally equal citizens under the secular framework of 1972, found itself in a subtly different constitutional position under a framework that identified the state's foundational values with a religion to which Hindu citizens did not belong. The practical consequences were felt not primarily in overt discrimination but in the accumulation of smaller disadvantages: the marginalization of Hindu

concerns in political deliberation, the strengthening of social norms that treated Hindu cultural and legal distinctiveness as foreign rather than as a legitimate expression of national plurality, and the growing sense within the Hindu community that their status was precarious and that the state's formal equality guarantees could not be relied upon in practice.

The Eighth Amendment to the Constitution, passed under Ershad's government in 1988, took the process of Islamic constitutionalization significantly further by formally declaring Islam the state religion of Bangladesh. This was a dramatic change that had been explicitly rejected by the framers of the 1972 Constitution. The declaration of Islam as the state religion, while accompanied by formal assurances that the rights of followers of other religions were fully protected, created an even more acute tension between the constitution's formal equality commitments and its ideological orientation toward a particular religious tradition. The Hindu community's reaction to the Eighth Amendment was one of profound alarm: public demonstrations were held by Hindu organizations, protest statements were issued by community leaders, and the legal and political implications were extensively debated.

For the purposes of this Part's focus on the legislative history of Hindu personal law reform, the significance of the Eighth Amendment is that it made the political environment for minority law reform even more hostile than it had already been. After 1988, any argument for reforming Hindu personal law in the direction of gender equality could be met with the response that such reform was incompatible with the Islamic character of the state, or that the state had no business interfering with the religious law of the Hindu community, or that the priorities of the state, properly understood in terms of its Islamic identity, did not include protecting the rights of Hindu women within their own community's internal arrangements. Each of these responses was constitutionally problematic, but each reflected a real feature of the political environment created by the Eighth Amendment.

18.2 The Vested Property Act and the Structured Dispossession of Hindu Families

No examination of the political and legal history of the Hindu community in Bangladesh during the military period can omit a careful analysis of the Vested Property Act and its operation. The Vested Property Act of 1974, as modified by subsequent amendments and administrative orders, was not merely a piece of economic legislation: it was, in its practical operation, a mechanism of communal dispossession that interacted with the weaknesses of Hindu personal law to compound the vulnerability of the Hindu community.

The basic operation of the Act has already been described in earlier parts of this treatise. What requires attention here is the way in which the Act was specifically used during the military period, the scale of the dispossession it facilitated, and the political dynamics that prevented its repeal or meaningful reform for so long. A comprehensive study by the research organization Ain O Shalish Kendra, conducted in the 1990s, estimated that approximately 2.6 million acres of land had been vested in the government under the Act by that point. Given that the Hindu population of Bangladesh was approximately ten percent of the total at the time of the study, this figure represents an extraordinary proportion of the Hindu community's total landholding. The study documented the mechanisms through which vesting took place: fraudulent listings of

individual names in the "enemy property" schedules, manipulation of local administrative records, collusion between local officials and those seeking to acquire the land, and the systematic failure of the judicial system to provide effective relief to dispossessed families who sought to challenge vesting through litigation.

The intersection of the Vested Property Act with the Dayabhaga inheritance rules deserves specific attention here because it illustrates a theme that will recur throughout this Part: the way in which the failure of personal law reform interacts with and compounds other dimensions of Hindu legal vulnerability. Under the Dayabhaga rules, a Hindu widow has only a limited life interest in her husband's property and cannot alienate it. A Hindu daughter does not inherit as a coparcener in the joint family property. These limitations mean that when a Hindu family's male head of household emigrates, dies, or disappears in circumstances that could trigger the Vested Property Act, the women of the family are in an especially vulnerable position: they cannot assert ownership claims in their own right, they lack the legal standing that full inheritance rights would have given them, and they are therefore less able to resist the government's vesting of their family's property. The reform of inheritance rights would have strengthened the capacity of Hindu women to protect their families' property from dispossession. The failure to reform those rights left that capacity impaired precisely when it was most needed.

18.3 Ershad's Political Strategy and the Further Marginalization of Hindu Concerns

General Hussain Muhammad Ershad, who seized power in a coup in March 1982 and governed Bangladesh until his removal by a popular uprising in December 1990, pursued a political strategy with respect to religious minorities that was more complex and more cynical than the straightforward religious nationalism of his predecessor Zia. Ershad recognized that the Hindu community represented a significant electoral constituency, concentrated in certain geographic areas and potentially capable of influencing outcomes in specific constituencies. He therefore cultivated Hindu leaders selectively, made public gestures of communal harmony, and positioned himself as a protector of minority interests while simultaneously pursuing the constitutional Islamization that the Eighth Amendment represented.

This combination of selective patronage and structural marginalization is a pattern that would be reproduced, with variations, by subsequent governments, and it is central to understanding why Hindu personal law reform has been so persistently elusive. The selective patronage approach treats the Hindu community primarily as a political resource to be managed rather than as a community of citizens with legitimate legal claims that require substantive redress. It rewards community leaders who maintain good relations with the government and marginalizes those who press aggressively for legal reform. It creates incentives for Hindu community leaders to prioritize access and influence over principled advocacy, knowing that the immediate benefits of access (protection from communal violence, favorable administrative decisions on individual cases, public expressions of respect for Hindu culture) may be more immediately valuable to their constituents than the longer-term benefits of legal reform that seems perpetually remote.

The result is a political dynamic in which Hindu community leaders are systematically incentivized to make compromises that prioritize short-term protection over long-term legal

transformation. This dynamic is not the product of weakness or bad faith on the part of community leaders; it is the rational response to a political environment in which structural reform is unavailable and marginal improvements in administrative practice represent the best available outcome. But it is a dynamic that has historically made sustained, principled advocacy for comprehensive Hindu personal law reform very difficult to maintain.

During Ershad's period, the question of Hindu personal law reform did occasionally surface in legal circles. The Legal Aid and Human Rights Organization, established in Dhaka in the 1980s, documented cases of Hindu women who had been denied inheritance rights and sought to provide legal assistance. A small number of academic studies were published examining the discriminatory character of the Dayabhaga rules and proposing reforms. But none of this activity rose to the level of organized political advocacy, and none produced legislative proposals that achieved significant parliamentary attention.

18.4 The Absence of Effective Judicial Challenge

The period from 1975 to 1990 also saw the continued failure of judicial challenge to transform the legal landscape for Hindu women. The High Court Division of the Supreme Court, which had jurisdiction to hear constitutional petitions challenging discriminatory laws, did hear a small number of cases involving Hindu personal law matters, but these cases were primarily concerned with the interpretation of Dayabhaga rules in specific factual situations rather than with the constitutional challenge to the rules themselves.

The reasons for this absence of successful constitutional challenge in this period are multiple. The judiciary under military rule was significantly compromised in its independence: the Fifth and Seventh Amendments (the latter validating Ershad's martial law) had subjected the courts to forms of executive control that constrained their capacity to deliver judgments hostile to the government's interests or ideology. Even where judges might have been personally sympathetic to arguments for constitutional reform of personal law, the institutional environment was not conducive to bold constitutional adjudication of the kind that would have been necessary to strike down discriminatory personal law rules.

Moreover, the constitutional framework created by the Fifth Amendment had weakened the formal basis for such challenges by removing secularism from the foundational principles and introducing Islamic formulations that could be used to argue that the state's religious orientation placed limits on the kind of equality claims that could be made against personal law rules. The Eighth Amendment of 1988 further complicated the constitutional picture by raising the question of whether a state whose official religion was Islam could constitutionally require reform of the religious law of another community in the direction of gender equality, or whether such a requirement would itself violate the freedom of religion guarantee.

These complications were not insurmountable in legal terms: careful constitutional argument could have navigated around them. But they created uncertainty that made judicial challenge a less attractive strategy for advocates who had limited resources and were operating in an institutional environment that was not reliably hospitable to the claims of minority communities.

18.5 The Development of Civil Society and the Seeds of Advocacy

Despite the unpromising political environment of the military period, the years from 1975 to 1990 did see the development of the civil society organizations whose later activism would be central to the reform effort. This development deserves attention here not because it produced significant results in the domain of Hindu personal law during this period, but because it created the organizational infrastructure, the issue-framing capacities, and the networks of advocacy that would be deployed more effectively in the subsequent democratic period.

The most significant development in this regard was the emergence of women's organizations and legal aid organizations that began systematically documenting the legal discrimination facing women in Bangladesh, including Hindu women. Ain O Shalish Kendra, established in 1986, became one of the most important organizations in this space. Its mandate was broad: documentation of legal violations, provision of legal aid to marginalized communities, research on the legal framework, and advocacy for legal reform. In its early years, its primary focus was on Muslim women's rights, reflecting the numerical dominance of Muslim women among its potential client base. But it consistently included Hindu women in its documentation work and its advocacy, and it was among the first organizations to produce systematic empirical evidence of the ways in which the Dayabhaga rules operated to deny Hindu women their rights in practice.

Bangladesh Mahila Parishad, the National Women's Association, was also active in this period and included Hindu women's rights within its broader agenda for women's legal reform. The organization's commitment to women's rights across communal lines was an important statement of principle in a period when communal divisions were being sharpened by the politics of religious nationalism.

The development of these civil society organizations had several consequences that would prove significant in the longer term. It created institutional homes for the documentation and advocacy work that the reform agenda required. It connected the Hindu personal law question to the broader agenda of women's rights advocacy, which had access to international feminist networks, funding from international development organizations, and the moral authority that came from alignment with the global movement for women's equality. And it began the process of training a cadre of lawyers, researchers, and advocates who would be capable of making sophisticated arguments for Hindu personal law reform using the constitutional, comparative, and international human rights frameworks that were becoming increasingly important in legal advocacy globally.

18.6 International Context: CEDAW and the New Human Rights Framework

The period from 1975 to 1990 was also the period in which the international human rights framework that would become one of the most important tools in the reform advocacy was being constructed. The Convention on the Elimination of All Forms of Discrimination Against Women, adopted by the United Nations General Assembly on December 18, 1979, entered into force on September 3, 1981. Bangladesh ratified CEDAW on November 6, 1984, with reservations to Articles 2 and 16 (1)(c) and (f), which relate to non-discrimination in legal

matters and equality in marriage and family relations. The significance of these reservations, which Bangladesh justified on the grounds of their incompatibility with its religious laws, is enormous and will be examined in detail in the next chapter. But the act of ratification itself was significant: it represented a formal commitment by the Bangladeshi state to the principle of eliminating discrimination against women, a commitment that advocates could use to hold the state to account.

The CEDAW Committee, established to monitor states' compliance with the convention, began its work in 1982. Its reviews of Bangladesh's compliance with CEDAW obligations would become, over the following decades, one of the most consistent and authoritative sources of pressure for Hindu personal law reform. The Committee's concluding observations on Bangladesh's periodic reports repeatedly identified the unreformed character of Hindu personal law as a significant violation of CEDAW obligations and called for comprehensive reform. The Committee's authority as an expert body, its institutional connection to the United Nations system, and its capacity to generate international attention and reputational pressure on non-compliant states made it an important resource for domestic advocates seeking to legitimize and amplify their campaigns.

The development of the CEDAW framework also provided advocates with a new conceptual tool: the argument that the state's failure to reform discriminatory personal law was not merely a domestic policy choice but a violation of binding international legal obligations. This argument was politically powerful because it allowed advocates to appeal beyond domestic political processes that might be closed to them, to invoke the authority of international bodies that Bangladesh had acknowledged as legitimate, and to connect the Hindu personal law question to the global conversation about women's rights and gender equality.

CHAPTER NINETEEN: THE DEMOCRATIC TRANSITION AND THE FLOWERING OF CIVIL SOCIETY ADVOCACY, 1990 TO 2001

19.1 The Mass Uprising of 1990 and the Return to Democracy

The mass uprising of December 1990, which forced General Ershad's resignation and inaugurated the democratic transition that would, with significant interruptions and controversies, characterize Bangladesh's political system for the following three decades, created a dramatically different political environment for questions of legal reform, including the reform of Hindu personal law. The restoration of parliamentary democracy, confirmed by the elections of February 1991 in which the Bangladesh Nationalist Party won a majority under Khaleda Zia, brought with it a new political space in which civil society advocacy, parliamentary petitioning, and public debate on legal reform became more feasible.

The democratic transition did not, of course, automatically produce favorable conditions for Hindu personal law reform. The BNP that came to power in 1991 was not ideologically committed to secular nationalism in the Awami League mode, and its political coalition included

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Islamist parties, particularly the Jamaat-e-Islami, that were deeply hostile to any reform of religious personal law. But the restoration of competitive electoral politics created incentives and opportunities for advocacy that had not existed under military rule. Parliamentary committees could be petitioned. Private members' bills could be introduced. Civil society organizations could engage with parliamentarians. The press could report on legal discrimination without the same degree of censorship that had operated under military governments.

The period from 1991 to 2001 saw a remarkable flowering of civil society activity on the Hindu personal law question. Organizations that had been developing their capacities during the military period now deployed those capacities in sustained advocacy campaigns. New organizations emerged specifically focused on the reform agenda. Academic research on Hindu personal law in Bangladesh multiplied. International connections were strengthened, bringing both financial resources and intellectual exchange that enriched the quality of the advocacy. And the first systematic efforts to develop specific legislative proposals for comprehensive Hindu personal law reform were made.

19.2 The Major Civil Society Organizations and Their Strategies

The civil society advocacy for Hindu personal law reform in the 1990s was carried by a network of organizations with overlapping but not identical mandates, approaches, and constituencies. Understanding the differences between these organizations, their strategies, their achievements, and their limitations is essential to understanding both what was accomplished in this period and why comprehensive legislative reform remained out of reach.

Ain O Shalish Kendra (ASK) continued its role as the most systematic documentation and legal aid organization engaged with Hindu personal law issues. Its work in this period combined three elements: direct legal assistance to Hindu women who had been denied inheritance rights or who were seeking maintenance from absent husbands and who had no legal mechanism through which to compel it; systematic documentation of the legal discrimination resulting from the Dayabhaga rules; and advocacy for legislative reform through public reports, media engagement, and parliamentary submissions. ASK's documentation work was particularly valuable in providing concrete empirical evidence that the abstract legal discrimination embedded in the Dayabhaga rules translated into real deprivation for real women. Its reports documented cases from across Bangladesh: widows denied access to their late husbands' property, daughters excluded from inheritance in favor of male relatives, women unable to remarry after de facto abandonment by husbands who had taken second wives or simply departed, women denied maintenance because the law provided no mechanism for compelling it.

Bangladesh Mahila Parishad (BMP) approached the Hindu personal law question primarily through its broader feminist advocacy framework. The organization's position was that the reform of personal law for all communities, including Hindu women, was part of the wider agenda of gender equality that required both legal reform and social transformation. BMP was particularly active in developing the argument for a Uniform Family Code: a single legal framework governing marriage, divorce, inheritance, adoption, and maintenance for all citizens regardless of religion. The Uniform Family Code proposal was and remains one of the most

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ambitious and most controversial elements of the reform agenda, and we will examine it in detail below.

The Bangladesh Hindu Buddhist Christian Unity Council (BHBCUC), established specifically as an organization representing religious minorities, approached the reform question from a communal rights perspective. Its advocacy emphasized the rights of the Hindu community as a community, the disproportionate vulnerability of the community to legal and social discrimination, and the state's obligation to protect minority communities. The BHBCUC's approach was less explicitly feminist than that of ASK or BMP: it emphasized the reform of Hindu personal law as a matter of community rights and community development rather than specifically as a matter of gender equality. This difference in framing reflected the organization's broader mandate of representing Hindu communal interests, which included both men and women, and its need to maintain internal consensus within a community in which traditional leaders were not always sympathetic to gender equality arguments.

The legal profession itself began to play a more active role in the reform advocacy during this period. A small but growing cohort of lawyers, primarily women, began specializing in the representation of Hindu women in personal law matters and in the constitutional and public interest litigation that began to test the limits of the existing law. The Supreme Court Bar Association and the Dhaka Bar Association both became sites of debate about Hindu personal law reform, though the debate within the legal profession was far from uniformly supportive of reform.

19.3 The Uniform Family Code Proposal: Origins, Arguments, and Controversies

The proposal for a Uniform Family Code for Bangladesh, advanced primarily by Bangladesh Mahila Parishad and subsequently taken up by other women's organizations, deserves extended examination here both because it was the most ambitious reform proposal advanced in this period and because the controversy it generated illuminates the political dynamics that have made comprehensive reform so difficult.

The Uniform Family Code proposal drew on several intellectual traditions simultaneously. From the comparative law tradition, it drew on the example of states that had unified their personal law systems: Turkey's adoption of a secular family code in 1926, the French and German civil codes that applied a single family law regime to all citizens, and the ongoing debate about a Uniform Civil Code in India that had been a constitutional aspiration since 1948 but had not been legislatively realized. From feminist legal theory, it drew on the argument that the maintenance of separate personal law systems for different religious communities was itself a mechanism of gender subordination, because it gave religious authorities and community elders leverage over women's legal status that they would not have if family law were a matter of uniform secular legislation. From human rights theory, it drew on the CEDAW framework and the argument that Bangladesh's international obligations required it to eliminate discriminatory personal law regardless of its religious source.

The Uniform Family Code proposal was simultaneously principled and deeply politically contested. Its proponents argued that the proposal was the most coherent and comprehensive response to the structural problem of discriminatory personal law: rather than trying to reform each community's personal law separately, a unified code would establish a single framework of equal rights applicable to all citizens, ending the system in which women's legal status varied by religious affiliation and in which religious authorities could invoke the sacrosanct status of religious law to resist reform. The proposal was framed as an expression of the secular nationalist ideals of 1971, as a logical implication of the constitution's equality guarantees, and as the most effective way of ensuring that all Bangladeshi women received the equal protection of the law.

The critics of the proposal came from multiple directions. Conservative Muslim scholars and organizations objected that a Uniform Family Code would necessarily override Quranic provisions of Muslim family law, which they regarded as divinely ordained and not subject to legislative modification. This objection had significant political weight in a country where the large majority of the population was Muslim and where the relationship between law and Islamic identity was politically sensitive. Hindu traditionalists, surprisingly, sometimes aligned with these objections: they argued that the imposition of a uniform code would destroy Hindu religious and cultural distinctiveness, erasing the particular legal traditions of the community in favor of a homogenizing secular framework that did not adequately respect religious pluralism.

A more nuanced objection came from some feminist legal theorists and human rights scholars who, while fully supportive of gender equality in personal law, questioned whether the Uniform Family Code proposal was strategically the best approach. This argument, associated most prominently with scholars like Flavia Agnes in India who had examined similar debates in that context, held that the demand for a uniform code could be instrumentalized by Hindu nationalist forces to target Muslim personal law while leaving Hindu women no better off in practice. It also argued that the history of uniform personal law proposals in South Asia suggested that such proposals tended to produce political backlash that made any reform more difficult, and that a more realistic strategy was to pursue reform within each community's existing personal law framework while maintaining pressure for eventual convergence.

This strategic debate within the reform advocacy community is not merely of historical interest. It reflects a genuine tension that has never been fully resolved between the principled argument for a uniform secular framework and the pragmatic argument for community-specific reform that may be less principled but more achievable. The debate has continued in different forms up to the present, and it shapes the specific legislative proposals that will be examined in the following chapters.

19.4 Academic and Intellectual Contributions to the Reform Debate

The 1990s also saw a significant development in the academic literature on Hindu personal law in Bangladesh. A generation of Bangladeshi legal scholars began producing serious academic work that examined the Dayabhaga rules in their historical, comparative, and constitutional context, and that contributed intellectual resources to the advocacy effort.

Among the most important contributions of this period was the work of Dr. M. Shah Alam of the Bangladesh Institute of Law and International Affairs. Shah Alam's systematic examination of Hindu family law reform in Bangladesh, produced across a series of articles and monographs in the 1990s and early 2000s, provided the most rigorous legal analysis of the reform question available in the Bangladeshi academic literature. Shah Alam's work had several distinctive qualities: it engaged seriously with the classical Dayabhaga texts and with the colonial judicial construction of those texts; it examined the specific gaps and ambiguities in the existing law that created particular hardships for Hindu women; it analyzed the constitutional basis for reform in detail; and it proposed specific legislative measures with careful attention to the technical legal drafting required. His work became a reference point for subsequent advocates and lawmakers and contributed significantly to the intellectual seriousness with which the reform debate was conducted in Bangladesh.

The emergence of gender studies as an academic discipline in Bangladeshi universities also enriched the intellectual environment. Scholars working at the intersection of gender studies, law, and South Asian studies produced analyses of Hindu women's legal situation that connected the specifically Bangladeshi context to comparative and theoretical frameworks developed in the global literature on gender and law. This intellectual cross-pollination was important for the sophistication of the advocacy: advocates could now draw not only on the classical Dayabhaga texts and the Indian reform experience but on feminist jurisprudence, critical legal studies, postcolonial theory, and the developing literature on transformative constitutionalism.

The academic literature of this period also began to engage more systematically with the jurisprudential question of what exactly was wrong with the Dayabhaga rules from a philosophical standpoint. Earlier reform advocacy had tended to argue pragmatically: the rules are outdated, India has changed them, international law requires change. The academic literature of the 1990s added a deeper dimension: an examination of whether the rules, even on their own terms, were consistent with the Dharmic values they claimed to embody, and an argument that reform was not merely a concession to modern political pressure but an expression of the internal logic of a legal tradition that had always understood Dharma as dynamic and contextually responsive.

19.5 The First Parliamentary Debates and the Politics of Stalemate

The democratic period from 1990 to 2001 saw the question of Hindu personal law reform reach the floor of the Bangladesh Parliament for the first time, though without producing any legislative result. Parliamentary questions were posed by Hindu Members of Parliament on the situation of Hindu women under the Dayabhaga rules. Private members' notices on the subject were filed, though they were never debated. The Law Commission received formal submissions from civil society organizations requesting that it include Hindu personal law reform in its work programme.

The parliamentary debates of this period reveal the political dynamics that made reform so difficult. Speeches by Hindu Members of Parliament in favor of reform were met with silence or dismissal rather than open opposition: the majority community's representatives neither

supported reform nor explicitly opposed it, but simply treated it as not a priority for the parliamentary timetable. The few Awami League parliamentarians who engaged with the question tended to express sympathy with the principle of reform while noting the political difficulties and suggesting that further consultations within the Hindu community were necessary before legislative action could be taken. BNP parliamentarians, particularly those from constituencies with significant Islamist influence in their political coalition, were more clearly hostile, but the hostility was rarely made explicit in communal terms; instead, it was expressed through procedural objections and claims that the Hindu community itself was divided on the question.

This "consultations first" argument, advanced by government representatives of both major parties at various points, became a standard mechanism for deferring reform without explicitly opposing it. The argument was that the Hindu community was not united in its demand for reform, that traditional community leaders had concerns about the implications of state intervention in religious law, and that it would be inappropriate to legislate without broader consensus. The argument had enough surface plausibility to be rhetorically useful, but it rested on a series of questionable premises. The first was that the "Hindu community" was a unified entity capable of reaching consensus on legal questions: in reality, the community was divided by caste, region, class, and gender in ways that made any single "community view" impossible to construct. The second was that the absence of consensus was a reason for the state not to legislate: in fact, the state routinely legislated on matters where communities were divided, applying constitutional principles of equality rather than waiting for traditional hierarchies to reach agreement. The third was that the consultation requirement was being applied evenhandedly: in fact, the Muslim personal law had been modified on several occasions in Bangladesh without the kind of extensive community-wide consultation that was being demanded as a precondition for Hindu personal law reform.

The "consultations first" argument also reflected a strategic deployment of the traditional/progressive split within the Hindu community itself. The government, by pointing to the existence of traditional community leaders who expressed reservations about reform, could position itself as neutral between competing Hindu voices rather than as an actor with an independent constitutional obligation to ensure equality under the law. This positioning deflected the constitutional argument: if the state merely needed to referee between different Hindu views, the constitutional mandate for equality became less pressing than if the state were required to ensure that its laws did not discriminate.

19.6 The Role of International Pressure: CEDAW Reviews and UPR

The international dimension of the reform advocacy became significantly more important during the 1990s, as the institutional infrastructure of international human rights monitoring was developed and as Bangladesh began to participate in the review processes associated with its treaty obligations. The CEDAW Committee's reviews of Bangladesh in 1993 and 1997 produced concluding observations that explicitly addressed the discrimination embedded in Hindu personal law and called for its reform.

The CEDAW Committee's 1997 concluding observations on Bangladesh were particularly pointed. The Committee expressed concern about the persistence of discriminatory provisions in personal law for women of all religious communities, specifically including the provisions of Hindu personal law that denied women equal rights in inheritance. It called on Bangladesh to review all its personal law provisions and to take measures to ensure that they conformed with the non-discrimination requirements of the convention. It also expressed concern about Bangladesh's reservations to Articles 2 and 16 of CEDAW and called on the government to consider withdrawing those reservations.

The significance of these international observations for the domestic advocacy effort was considerable. They provided advocates with authoritative external validation of their claims, allowing them to argue that the demand for Hindu personal law reform was not a parochial concern of a small minority community but a requirement of binding international law that the Bangladeshi state had formally accepted. They provided a mechanism through which the government's record on this question could be internationally scrutinized and evaluated. And they created a form of reputational accountability that, while not carrying the direct legal force of domestic constitutional obligations, could be politically significant in a government that was seeking international legitimacy and foreign aid.

The Universal Periodic Review mechanism of the UN Human Rights Council, which was established in 2006, would add another layer of international scrutiny in the following decade. But even in the 1990s, the CEDAW review process was establishing a pattern of international attention to the Hindu personal law question that would become increasingly important in subsequent years.

CHAPTER TWENTY: THE PROPOSED HINDU CODE BILL AND THE ANATOMY OF LEGISLATIVE FAILURE, 2000 TO 2010

20.1 The Genesis of the Hindu Code Bill Proposal

The decade from 2000 to 2010 represents the period in which the Hindu personal law reform question came closest to legislative action in Bangladesh, and then retreated most completely from that proximity. The story of the Hindu Code Bill proposed in this period is a paradigmatic case study in the politics of personal law reform in a Muslim-majority democracy with a politically vulnerable religious minority, and it deserves the most detailed examination available in the academic literature.

The genesis of the Hindu Code Bill proposal can be traced to the late 1990s, when the convergence of civil society advocacy, academic research, and international human rights pressure created conditions in which a concrete legislative proposal became thinkable. The Law Commission of Bangladesh, responding to sustained advocacy from civil society organizations, established a sub-commission to examine the Hindu personal law question and to develop proposals for reform. The sub-commission, which included both legal experts and civil society

representatives, worked through the late 1990s and produced a set of recommendations that formed the basis for the first draft of what would come to be called the Hindu Code Bill.

The Law Commission's recommendations drew extensively on the Indian experience with the Hindu Code Bills of the 1950s, on the academic literature on Dayabhaga law, and on the submissions of civil society organizations documenting the discrimination experienced by Hindu women under the existing rules. The recommendations were comprehensive in scope: they addressed marriage, divorce, maintenance, inheritance, adoption, and guardianship. On inheritance, the recommendations proposed abolishing the limited estate principle that restricted women's ownership rights and replacing it with absolute ownership, giving daughters equal inheritance rights with sons, and giving widows a full share rather than a limited life interest. On marriage, the recommendations proposed making marriage registration compulsory, establishing minimum age requirements, and prohibiting polygamy. On divorce, the recommendations proposed introducing a right of divorce for Hindu women, who under the existing Dayabhaga rules had no such right. On maintenance, the recommendations proposed clearer and more enforceable obligations. On adoption, the recommendations proposed expanding the circumstances in which adoption was permitted and clarifying the legal consequences.

The comprehensiveness of the proposals reflected the scale of the reform needed. But this comprehensiveness also contributed to the political difficulties of the Bill, because it made the measure appear more threatening to those who preferred the status quo. A narrower proposal focused on a single issue, inheritance for instance, might have faced less resistance; a comprehensive proposal that touched every aspect of Hindu personal law was easier to portray as a fundamental transformation of the community's religious law.

20.2 The 2006 Draft and the Law Commission's Report

The formal Law Commission report and its accompanying draft legislation were submitted in 2006, when the Bangladesh Nationalist Party under Prime Minister Khaleda Zia was in power. The report was a substantial document that provided both the intellectual justification for reform and specific legislative language for a comprehensive Hindu Personal Law Code. The draft Code, which ran to several dozen sections, addressed in statutory form the full range of matters covered by the Law Commission's recommendations.

The 2006 draft Code's provisions on inheritance merit detailed examination here, both because they were substantively the most important of the proposed reforms and because they generated the most controversy. The draft proposed to give daughters an equal share with sons in the property of their father, abandoning the Dayabhaga rule under which daughters received only a portion of the male share. It proposed to give widows absolute ownership of a portion of their husband's estate rather than the limited life interest recognized under the existing Dayabhaga rules. It proposed to abolish the distinction between different categories of women's property (Stridhana in its various forms) and to establish a single regime of absolute ownership. And it proposed to ensure that women who inherited property would have the same rights as men to alienate, mortgage, gift, and bequeath that property.

These provisions were directly modeled on the Indian Hindu Succession Act of 1956 and its 2005 amendments, though adapted to the Bangladeshi legal context and to the specific features of the Dayabhaga school. They were supported by the civil society organizations that had been advocating for reform, by the academic experts who had contributed to the Law Commission's deliberations, and by the international human rights community that had been calling for exactly these kinds of reforms.

The draft Code's provisions on marriage and divorce were also significant, though they generated somewhat different controversies. The proposal to introduce a right of divorce for Hindu women was perhaps the most radical in terms of its departure from classical Dayabhaga law, which recognized no mechanism for the dissolution of a validly contracted Hindu marriage. The draft proposed to create a court-based divorce procedure modeled broadly on secular divorce law, with grounds including adultery, cruelty, desertion, and incurable insanity, and with ancillary provisions for maintenance, custody of children, and property division. This proposal was modeled not directly on the Indian Hindu Marriage Act of 1955 but on a synthesis of Indian, Bangladeshi Muslim Family Law, and international best practices.

The proposal on marriage registration was less controversial in principle: the Hindu Marriage Registration Act that would eventually be enacted in 2012 owed much to the 2006 draft, even if the compulsory registration that the draft proposed was weakened to mere voluntary registration in the eventual Act. The proposals on adoption were also relatively uncontroversial in their broad outlines, though there were technical debates about the specific rules governing who could adopt and under what circumstances.

20.3 The Political Reception: From Cautious Welcome to Organized Opposition

The reception of the 2006 Law Commission report and draft Code was initially cautious but not uniformly hostile. Civil society organizations welcomed the report and called for its prompt enactment. A number of prominent Bangladeshi lawyers and legal scholars expressed support for the proposals. Several of the national newspapers published favorable editorials. And the CEDAW Committee, in its 2004 concluding observations submitted two years before the report but in anticipation of exactly this kind of development, had explicitly called on Bangladesh to adopt legislation reforming Hindu personal law.

But the organized opposition to the proposals, which developed rapidly in the months following the report's publication, was formidable and ultimately decisive. The opposition came from multiple directions, and its complexity illuminates the political dynamics that have made comprehensive reform so elusive.

The most publicly vocal opposition came from traditionalist elements within the Hindu community itself, organized primarily through the network of Hindu religious trusts, temple committees, and the organizations of religious leaders (particularly Brahmins) whose social authority was bound up with the traditional personal law system. These traditionalist voices argued that the proposed reforms were an attack on Hindu religious tradition, that the classical Dayabhaga rules were expressions of divine order that the state had no business overriding, and

that the real interests of the Hindu community lay in protecting their religious identity rather than in adopting the secular legal values of the reformers. This argument was expressed with particular vehemence in relation to the divorce proposal: the indissolubility of Hindu marriage was defended not merely as a legal rule but as a spiritual principle, an expression of the sacramental character of the Hindu marital bond that distinguished Hindu civilization from the secular cultures that treated marriage as a mere contract.

The traditionalist opposition within the Hindu community was in some respects the most difficult to deal with, precisely because it could not be dismissed as communal hostility from outside. When the government pointed to internal Hindu opposition to the reform as a reason for not proceeding, it had a plausible response to the critics who accused it of communal bias. But several important qualifications need to be entered here. First, the traditionalist opposition, while vocal, was not representative of the broad mass of the Hindu community's actual preferences: surveys and interviews conducted by civil society organizations suggested that the majority of Hindu women, and a significant proportion of Hindu men, supported at least the inheritance reforms. Second, the traditionalist position was systematically distorted by the way in which the traditional leadership was constituted: the Brahmins and religious leaders who dominated the organized voice of traditional Hinduism had particular material and status interests in preserving the existing rules, interests that were not shared by the rural poor women whose lives were most directly shaped by those rules. Third, the argument that the state should be guided by the traditionalist voice rather than by constitutional principles of equality is in any case constitutionally problematic: the state's obligation to ensure equality under the law is not conditioned on the achievement of community consensus.

The opposition from outside the Hindu community, primarily from Islamist political organizations and their sympathizers, was expressed in different terms but was equally significant. The central argument here was that the proposal was part of a broader secularizing agenda that threatened the Islamic character of the state, that the reform of Hindu religious law was an inappropriate intrusion of state power into religious matters, and that the law should respect the autonomy of religious communities to govern their internal affairs. This argument was more coherent in some respects than the traditionalist Hindu opposition, because it drew on a principled position about state-religion relations that had at least theoretical consistency. But it was also deeply hypocritical, because the same forces that opposed state intervention in Hindu religious law had regularly supported state intervention in Muslim family law when that intervention served traditional Muslim interests.

The BNP government of Khaleda Zia, which received the Law Commission report in 2006, was in a weak political position from which to pursue controversial reform. The government was facing its own political crisis, with the 2006-2007 period culminating in the declaration of a state of emergency and the assumption of power by a military-backed caretaker government. In this environment of political instability, the Hindu Code Bill was effectively shelved: the government neither formally rejected it nor forwarded it to Parliament for consideration. It remained in administrative limbo, formally pending but practically inert.

20.4 The Caretaker Government Period and the Status of the Bill (2007 to 2008)

The military-backed caretaker government that governed Bangladesh from January 2007 to December 2008, known popularly as the minus-two government for its stated ambition to remove both Khaleda Zia and Sheikh Hasina from politics, took a distinctive approach to the reform agenda. The caretaker government was composed largely of technocrats and civil society figures rather than traditional politicians, and it pursued a reform agenda focused primarily on anti-corruption measures and institutional reform. It had some interest in substantive legal reforms, including personal law reform.

During this period, the Hindu Code Bill received renewed attention. Senior officials in the caretaker government expressed support for the principle of Hindu personal law reform. Consultations were held with civil society organizations. There were reports that the government was seriously considering the enactment of at least a partial version of the proposed Code through the presidential ordinance power that the caretaker government was relying upon for its legislative action.

These reports generated considerable excitement in civil society circles and among advocates for Hindu personal law reform. It appeared, briefly, that the political vacuum created by the military-backed interlude might provide an opportunity to enact reform that the pressures of normal democratic politics had blocked. The caretaker government was not subject to the same electoral pressures from Muslim-majority constituencies that had constrained elected governments. It had some interest in establishing a reformist legacy. And it had the legal mechanism, through the presidential ordinance, to act without requiring parliamentary approval.

But the opportunity was not taken. The caretaker government ultimately declined to enact the Hindu Code Bill, reportedly because of concerns about the political backlash it might generate and about the legitimacy of making such a significant change to religious personal law through an executive instrument rather than through the normal parliamentary process. The argument about parliamentary legitimacy was, in this instance, more principled than convenient: there is a genuine argument that changes to personal law of such fundamental importance should be made through the full democratic process rather than by executive fiat, because the democratic process provides the deliberation, accountability, and popular legitimacy that significant legal changes require. But the effect, whatever the reasons, was that the reform opportunity was not taken, and when the elected parliament reconvened in January 2009 following the elections of December 2008, the Hindu Code Bill was again on the table but no closer to enactment.

20.5 The Awami League's Return to Power and the Renewed Hope of 2009

The elections of December 2008 produced a landslide victory for the Awami League under Sheikh Hasina, with the party winning 230 of the 300 contested parliamentary seats. The magnitude of the Awami League victory, the largest in its history, generated significant optimism in civil society circles about the prospects for Hindu personal law reform. The Awami League had been the political party most consistently associated with secular nationalism, with minority rights, and with the original constitutional vision of 1972. Its 2008 election manifesto

had included specific commitments to Hindu personal law reform. And its massive parliamentary majority meant that it had no need of Islamist coalition partners whose opposition to reform had been a structural obstacle in previous periods.

The optimism of 2009 would prove to be substantially misplaced, and the story of why will be told in detail in Chapter Twenty-Two. But for present purposes, the important point about the 2000-2010 decade is the trajectory it describes: from the intellectual and institutional preparation of the Law Commission report, through the political controversy and eventual shelving of the proposals, to the renewed hope of the 2009 electoral landslide. This trajectory reveals a pattern that will prove persistent across the entire history of the reform question: periods of promise followed by disappointment, moments when reform seems imminent and then retreats, political configurations that appear favorable but that are ultimately constrained by the same structural factors that have blocked reform throughout the republic's history.

20.6 Theoretical Analysis: Path Dependency and Institutional Inertia

The failure of the Hindu Code Bill in the 2000-2010 decade, despite apparently favorable conditions at several points during this period, invites theoretical analysis using the concept of path dependency developed in institutional economics and subsequently applied to legal and political analysis by scholars including Paul Pierson, Kathleen Thelen, and Ruth Berins Collier.

Path dependency theory holds that the development of institutions, including legal institutions, is shaped by the choices made at earlier "critical junctures" in ways that create self-reinforcing mechanisms making subsequent change increasingly difficult. Applied to the Hindu personal law situation in Bangladesh, the theory suggests that the failure to reform at the first critical juncture, the period of immediate post-independence constitution-making from 1971 to 1975, created institutional path dependencies that have made subsequent reform progressively more difficult.

The mechanisms of path dependency in this context operate on multiple levels. At the legal-doctrinal level, the acceptance of colonial-era Dayabhaga law as the default framework for Hindu personal law created a legal precedent that subsequent courts and legislators had to work around rather than simply applying new principles. The accumulated body of case law interpreting Dayabhaga rules, spanning colonial and post-independence periods, created interpretive frameworks that were deeply entrenched and that generated their own momentum. Lawyers trained in the existing law were invested in its continuation. Judges familiar with the colonial precedents were more comfortable applying them than developing new constitutional approaches. The sheer volume of accumulated doctrine created a form of institutional inertia that made radical departure seem legally risky even when it was philosophically justified.

At the political level, the failure of early reform created what path dependency theorists call a "lock-in" effect through the distribution of benefits under the existing system. Those who benefited from the Dayabhaga rules, primarily older male relatives who were the residual beneficiaries of women's reduced inheritance rights, had ongoing interests in the system's continuation. Those interests could be organized into political opposition to reform when reform was proposed. The organization of opposition was made easier by the fact that the traditionalist

Hindu religious infrastructure, which was itself a beneficiary of the status quo in the sense that its authority depended partly on the community's continued reliance on religious law, provided an institutional vehicle for opposing reform that was framed in terms of religious principle rather than naked self-interest.

At the societal level, the long duration of the unreformed system created social norms and expectations that were themselves obstacles to reform. Families that had organized their property arrangements, their succession planning, and their inheritance expectations around the Dayabhaga rules would be disrupted by a change in those rules. The disruption would fall unevenly, affecting those in the middle of multi-generational inheritance disputes differently from those who had not yet faced the issue. The complexity of the transitional effects provided material for objections to reform that were not simply self-interested but reflected genuine uncertainty about how change would affect specific situations.

The path dependency framework also illuminates the significance of the occasional "windows of opportunity" that have opened in the history of the reform question, such as the immediate post-independence period, the 2007-2008 caretaker government period, and the post-July Revolution period of 2024-2026. These windows occur when the normal path-reinforcing mechanisms are temporarily disrupted by political change. Constitutional moments, changes of government, military interventions, popular uprisings, all of these can create conditions in which entrenched institutional arrangements become temporarily vulnerable to challenge. The failure to exploit these windows when they open means that the existing path is reinforced once the normal mechanisms reassert themselves, making the next window more difficult to open and more urgently necessary to exploit when it does occur.

CHAPTER TWENTY-ONE: THE HINDU MARRIAGE REGISTRATION ACT 2012: ACHIEVEMENT, LIMITATION, AND ANALYTICAL SIGNIFICANCE

21.1 The Enactment and Its Context

The Hindu Marriage Registration Act 2012 represents the only significant legislative action on Hindu personal law undertaken by any Bangladeshi government since the independence of the country. It is, therefore, a text of special importance for the legislative history this Part examines. But it is important precisely because of what it reveals about the political dynamics of Hindu law reform: both about what was achievable and about the nature of the limitations imposed by the political environment.

The Act was enacted during the first term of Sheikh Hasina's Awami League government, which had won the 2008 election with a massive majority. The context of the Act's enactment is revealing. The Awami League's 2008 election manifesto had included a commitment to Hindu personal law reform. Civil society organizations, emboldened by the electoral outcome, renewed their advocacy for comprehensive reform. The Law Commission's 2006 report was dusted off and submitted again as the basis for a comprehensive Hindu Personal Law Code. And

international human rights bodies, including the CEDAW Committee in its 2011 concluding observations, again called for comprehensive reform.

What emerged from this political process was not the comprehensive reform that advocates had demanded but a much more limited measure: an act providing for the voluntary registration of Hindu marriages. The Hindu Marriage Registration Act 2012 created a legal mechanism through which Hindu couples could register their marriages with a government registrar, receiving an official certificate that would be recognized as legal evidence of the marriage. The Act set out requirements for the registration process, designated the relevant administrative authorities, and established penalties for making false declarations in the registration process.

The Act was, in the limited terms of what it actually achieved, a genuine and useful reform. The lack of any mechanism for Hindu marriage registration had created significant practical problems: women whose marriages were unregistered had difficulty proving their marital status for the purposes of obtaining identity documents, traveling internationally, claiming insurance benefits, and accessing other state services that required proof of marriage. The 2012 Act addressed these practical problems, and it did so in a way that was relatively uncontroversial: since registration was voluntary rather than compulsory, it did not force any religious ceremony to conform to state requirements and did not challenge the religious character of Hindu marriage in ways that traditionalist opponents could object to.

But the Act's very limitations are the most analytically significant thing about it. The contrast between what was proposed (comprehensive reform of marriage, divorce, inheritance, adoption, and maintenance) and what was enacted (voluntary registration of marriages) tells the story of the political constraints on reform in Bangladesh more vividly than any abstract analysis could.

21.2 Why Registration and Not Reform: The Political Logic

Understanding why the Awami League government, with its massive parliamentary majority and its stated commitment to Hindu personal law reform, enacted only voluntary marriage registration rather than comprehensive reform requires a close analysis of the political dynamics within the government and between the government and its various political interlocutors.

The first factor was the continuing division within the Hindu community itself. The traditional religious leadership, represented most prominently by the organizations of Brahmin priests and the trustees of major Hindu temples, was vocally opposed to the introduction of divorce, the reform of inheritance rules, and other elements of the comprehensive reform package. This opposition was expressed through direct lobbying of senior Awami League politicians, through public statements by religious leaders, and through the organization of community meetings at which the reform proposals were discussed and objections were registered. The Hindu traditionalist opposition to reform was not the only voice within the community, and it was arguably not the representative voice: surveys suggested that a majority of Hindu women supported at least the inheritance reforms. But it was a politically organized and institutionally resourced voice that had direct access to the political decision-makers in the government.

The political dynamics within the Awami League itself were also important. The League's relationship with the Hindu community was complex and in some respects parasitic: the community was a reliable Awami League electoral constituency, and the League therefore had an interest in maintaining that relationship without necessarily delivering the substantive legal reforms that the community actually needed. The selective patronage dynamic described in the previous chapter operated within the Awami League just as it had under earlier governments. Senior Hindu politicians within the Awami League, whose political success depended on their ability to deliver the community's votes to the League and to maintain their own influence within the community, had incentives to preserve the existing system in which their role as brokers between the community and the government was essential.

The opposition parties also played a role. The BNP, the main opposition, opposed comprehensive reform on a combination of grounds, some principled and some merely tactical. The principled objection was that the state should not interfere with the religious personal law of any community. The tactical objection was that comprehensive reform was divisive and controversial and could be used to portray the Awami League government as hostile to religious values. Islamist parties within and outside the BNP coalition made more explicitly religious arguments against reform.

Against this background of internal division, partisan opposition, and organized religious traditionalism, the Awami League government chose the path of minimal reform. The Hindu Marriage Registration Act 2012 was a measure that could be defended to the traditional Hindu religious leadership as a procedural reform that did not touch the substantive law, defended to international human rights bodies as a step toward reform, and defended to the reform-oriented civil society as a first step that would be followed by more comprehensive action. The first defense was genuine; the second was misleading; the third was ultimately false. Comprehensive reform did not follow, and the 2012 Act remained the only legislative measure enacted in the domain of Hindu personal law during fifteen years of Awami League government.

21.3 The Compulsory versus Voluntary Registration Debate

The most significant specific decision in the legislative process that produced the 2012 Act was the decision to make registration voluntary rather than compulsory. The draft bill that had been developed by civil society organizations and presented to the government proposed compulsory registration as the standard, with exceptions only in extraordinary circumstances. The argument for compulsory registration was straightforward: voluntary registration would be used only by those who already had the social and educational resources to seek it, while the Hindu women who most needed the protection of a marriage certificate, rural women with little education and less social power, would not benefit because their husbands would have no incentive to register and they would have no capacity to compel registration.

This argument was persuasive in principle but was defeated in the political process. The traditional Hindu religious leadership objected that compulsory registration would, in effect, force the state into the role of regulating Hindu religious ceremonies, because marriage registration was connected to the marriage ceremony itself. If registration were compulsory, they

argued, the state would indirectly be imposing requirements on the conduct of Hindu religious rites. This objection, though technically answerable (registration of a marriage does not necessarily require the marriage ceremony to conform to any state-imposed standard), had enough intuitive plausibility to provide cover for those in the government who preferred the voluntary option for other, less principled reasons.

The choice of voluntary registration had the predictable consequence: registration rates remained very low after the Act's enactment, concentrated among urban educated Hindus who had the resources and motivation to seek registration and who tended to be the least vulnerable members of the community. The rural poor Hindu woman for whose protection the reform had ostensibly been designed was no better off than before the Act.

21.4 Section 3 of the Act and Its Interpretive Controversies

A brief analysis of the specific legal text of the Act illuminates the ambiguities and inadequacies that characterize partial reform. Section 3 of the Hindu Marriage Registration Act 2012, which is the central operative provision, states that "a Hindu marriage may be registered." The use of the permissive "may" rather than the mandatory "shall" was the key textual decision that made registration voluntary rather than compulsory. But the provision is ambiguous in other respects as well.

The Act does not define what constitutes a valid Hindu marriage. It provides a mechanism for registering marriages but makes no attempt to address the substantive law of Hindu marriage, including questions about minimum age, the prohibition of polygamy, or the validity of marriages contracted in violation of the customary caste rules. The omission of any definition of valid marriage means that the registration provision cannot be used to impose any substantive requirements on Hindu marriages: a polygamous marriage, a child marriage, or a marriage between parties of different castes (which might or might not be valid under the applicable custom) could all be registered without the registration process providing any mechanism for challenging their validity.

This omission was pointed out by civil society critics of the Act at the time of its enactment, and it has continued to generate problems in practice. The Act's registration mechanism has not been used to challenge child marriage within the Hindu community, for instance, because the Act does not establish any minimum age requirement and does not connect registration to compliance with the Child Marriage Restraint Act. The Act has not been used to challenge polygamy because it does not prohibit registration of second marriages. These omissions reflect the political compromise that produced the Act: a substantive reform that actually changed the rules of Hindu marriage would have been more controversial and would have generated more organized opposition than the purely procedural reform of creating a registration mechanism.

21.5 Comparative Assessment: What the Act Failed to Achieve

Placing the 2012 Act in its comparative context provides the clearest measure of what it failed to achieve. The Indian Hindu Marriage Act of 1955, with which the 2012 Act must principally be

compared, accomplished in a single piece of legislation what Bangladesh has never managed: it prohibited polygamy, established minimum age requirements for marriage, created a judicial procedure for divorce, introduced a system of compulsory registration, and recognized inter-caste marriages. The comparison is not merely academic; it measures, with precision, the gap between what was politically achieved in one South Asian democracy and what has been politically achieved in another.

The comparison with Nepal's National Civil Code of 2017 is equally instructive. Nepal's Civil Code, which provides a unified framework for family law applicable across religious communities, abolished the traditional categories of Hindu personal law entirely and replaced them with a modern, gender-equal statutory framework. The Code gives women equal inheritance rights, provides for divorce by mutual consent, establishes uniform minimum ages for marriage, and prohibits polygamy. Nepal's achievement makes Bangladesh's limitation even more conspicuous: a country with a significantly smaller economy, weaker institutions, and greater legal capacity constraints than Bangladesh managed a comprehensive reform that Bangladesh, with all its comparative advantages, has not attempted.

21.6 The Act as Legal Archaeology: What It Reveals About the Legislative Process

The Hindu Marriage Registration Act 2012, read carefully as a legislative text, also reveals something important about the legislative process that produced it. The Act is technically competent within its limited scope: its provisions for registration procedures, its designation of registrars, and its requirements for documentary evidence of the marriage are all workable. But the care with which the Act avoids any engagement with the substantive questions of Hindu personal law, confining itself strictly to the procedural question of registration, is itself revealing. The Act is written to do exactly what was politically feasible and nothing more: it creates a mechanism that can be publicly described as reform while changing nothing in the substantive law.

This is the legislative equivalent of what lawyers sometimes call artful pleading: it satisfies the formal requirements of a commitment to change while carefully preserving everything that proponents of the status quo care about. It represents not legislative incompetence but legislative intelligence applied to the wrong problem: the problem of managing political pressure for reform rather than the problem of actually reforming the law.

CHAPTER TWENTY-TWO: THE AWAMI LEAGUE YEARS AND THE PARADOX OF PROMISE AND PARALYSIS, 2009 TO 2024

22.1 The Structure of the Paradox

The fifteen years of Awami League government from 2009 to August 2024 present the most acute paradox in the entire history of the Hindu personal law reform question in Bangladesh. This was the political party that, more than any other, had historically represented itself as the

champion of secular nationalism and minority rights. It was the party of liberation, the party that had governed at independence, the party whose founding leader Sheikh Mujibur Rahman had enshrined secularism in the original 1972 Constitution. It governed, for most of this period, with parliamentary majorities so large that it faced no serious institutional obstacle to enacting comprehensive reform. And yet, across fifteen years of governance, it enacted nothing of substance in the domain of Hindu personal law.

The paradox is real and demands explanation. The explanation offered here is not a simple one, because the reality was not simple. It involves the intersection of multiple factors: the evolution of the Awami League's ideological commitments over time; the dynamics of competitive authoritarianism that characterized the government's later years; the specific political calculations that shaped its approach to Hindu minority rights; and the structural obstacles to reform that had accumulated over decades of path dependency. But beneath all of these specific factors lies a more fundamental truth: that the promise of political representation and the delivery of legal protection are not the same thing, and that a government can simultaneously profess commitment to minority rights and systematically fail to deliver the substantive legal reforms that would give those rights real content.

22.2 The Awami League's Constitutional Nationalism and Its Contradictions

The Awami League's ideological orientation during the fifteen years from 2009 to 2024 underwent significant evolution that is relevant to understanding its failure on Hindu personal law reform. In the early years of its return to power, the Awami League pursued a program of constitutional restoration aimed at reversing the religious nationalist changes made to the constitution under military rule. The Fifteenth Amendment to the Constitution, enacted in 2011, restored secularism as a fundamental principle of the state while simultaneously retaining Islam as the state religion. This was a constitutional compromise that satisfied no one fully: secularists saw it as an inadequate restoration that preserved the Eighth Amendment's state religion declaration; Islamists saw it as an attack on the Islamic character of the constitution; and religious minorities, including the Hindu community, saw it as ambiguous at best about the constitutional status of their equal citizenship.

The Fifteenth Amendment's treatment of religion illustrated the Awami League's fundamental ambivalence about the secular nationalist heritage it claimed. The party's leadership was genuinely committed to a version of Bengali secular nationalism that treated cultural and ethnic identity as primary and religious identity as secondary. But it was also acutely aware of the political significance of Islamic sentiment in Bangladesh, particularly after the religious nationalist politics of the Zia and Ershad periods had reshaped political culture in ways that made explicitly secular positions electorally costly. The result was a politics of perpetual ambiguity on questions of religion and law, in which the Awami League sought to claim both the secular nationalist tradition and sufficient sensitivity to Islamic sentiment to retain its electoral coalition.

This ambiguity had specific consequences for Hindu personal law reform. The party could not pursue comprehensive reform without risking charges that it was imposing secular values on the Hindu community's religious law. It could not refuse to reform without risking charges that it

was betraying its secular nationalist and minority rights commitments. The political resolution of this dilemma was to defer: to promise reform in principle, to commission studies and establish committees, to make incremental gestures like the 2012 registration Act, and to invoke the "consultations first" argument to explain why comprehensive reform had not yet been enacted.

22.3 Competitive Authoritarianism and the Capture of Hindu Electoral Loyalty

A further dimension of the Awami League's approach to the Hindu community during this period deserves attention: the relationship between competitive authoritarianism, electoral politics, and minority rights. The Awami League's governance model in the years from 2014 onward increasingly exhibited the characteristics of what political scientists call competitive authoritarianism: a system in which the formal institutions of democratic competition persist but are systematically distorted in ways that give the ruling party unfair advantages.

In this system, the Hindu community's reliable electoral loyalty to the Awami League became an even more important resource for the party than it had been in genuinely competitive elections. As the election results of 2014, 2018, and 2024 became increasingly controlled through manipulation and suppression of opposition, the Hindu community's votes became one component of the managed electoral majority. The community's political significance was therefore partly maintained even as genuine democratic competition was suppressed.

But competitive authoritarianism also changed the structure of the incentive to reform. In a genuinely competitive democracy, the government's treatment of the Hindu minority community, including the question of personal law reform, would be subject to effective political accountability: if the government failed to deliver on its promises, Hindu voters could credibly threaten to shift their support. Under competitive authoritarianism, this threat was much less credible. The Hindu community's alternatives to the Awami League were either the BNP, whose association with Islamist politics made it even less likely to deliver Hindu personal law reform, or parties of the religious right that were explicitly hostile. The absence of a credible alternative effectively de-linked the government's treatment of the Hindu community from the normal incentive structure of democratic accountability.

This analysis suggests an important general point about the relationship between the quality of democracy and the quality of minority legal protection. Strong democratic accountability creates incentives for governments to deliver substantive protection for minority communities that can act as effective political constituencies. Weakened democratic accountability, as in the competitive authoritarian model of the later Awami League years, removes those incentives without necessarily removing the rhetoric of minority protection. The result is a growing gap between promise and performance, exactly the gap that characterized the Awami League's record on Hindu personal law reform throughout its period in power.

22.4 The Role of Hindu MPs within the Awami League

The role of Hindu Members of Parliament within the Awami League parliamentary group merits specific examination here, because it illuminates the structural constraints on reform advocacy

from within the governing political party. A significant number of Hindu politicians served in the Awami League governments from 2009 to 2024, occupying positions including cabinet ministries, parliamentary secretaryships, and committee chairs. The presence of Hindu politicians in senior positions was publicly celebrated as evidence of the government's commitment to minority inclusion.

But the practical impact of these Hindu politicians on the Hindu personal law reform question was minimal. This is not, in most cases, a reflection of personal indifference or bad faith. It reflects the structural position of minority politicians within a dominant party system. A Hindu politician who wishes to maintain their position within the Awami League and to continue delivering benefits to their constituency must primarily be responsive to the party leadership's priorities rather than to the specific legal demands of the Hindu community. They cannot publicly break with the party on the reform question without risking their position; they can advocate internally, but they do so without institutional leverage since they represent a reliable rather than a swing constituency; and they are subject to the same "consultations first" dynamics that the party uses to defer reform, because they are often invoked as the guarantors that adequate consultation with the Hindu community has taken place.

This structural analysis is not to excuse the failure of Hindu politicians to press more aggressively for reform. There were individual cases in which Hindu parliamentarians did advocate seriously for legal reform, did introduce private members' bills and notices, and did use their positions to keep the reform question on the political agenda. But the systemic failure was larger than any individual politician's capacity to address, because it was rooted in the political economy of the governing party rather than in individual failures of will or advocacy.

22.5 The Impact of the Vested Property (Return) Act and Its Inadequacies

One area in which the Awami League governments of the 2009-2024 period did take some action relevant to the legal situation of the Hindu community was the implementation of the Vested Property Return Act of 2001, which had been enacted at the end of the BNP-Awami League alliance period but had not been effectively implemented. The 2001 Act provided for the return to their original owners of properties that had been vested under the Enemy Property Act and its successors.

The implementation of this Act during the Awami League years was partial and contested. Some properties were returned; many more remained in government hands or in the hands of those who had acquired them through the vesting process. The tribunals established to adjudicate return claims were chronically underfunded, underequipped, and subject to political pressure. Reports by civil society organizations documented systematic delays, procedural obstacles, and outright corruption in the adjudication of return claims.

The Vested Property Return Act also illustrated, once again, the connection between personal law reform and other dimensions of Hindu legal vulnerability. The reform of Hindu women's inheritance rights would have strengthened the capacity of Hindu women to assert ownership claims under the Vested Property Return Act: a woman with full inheritance rights in her

husband's or father's property would have had clearer standing to assert a return claim. The failure to reform personal law therefore compounded the failure to effectively implement the vested property return mechanism, leaving Hindu families doubly vulnerable to dispossession.

22.6 The Later Hasina Years: Securitization of Minority Protection and the Eclipse of Legal Reform

In the later years of the Awami League government, particularly after 2018, the approach to minority protection was increasingly characterized by what might be called securitization: the framing of minority protection primarily in terms of preventing communal violence and protecting physical security, rather than in terms of substantive legal equality. This shift in framing had important consequences for the Hindu personal law reform question.

When minority protection is understood primarily as security provision, it becomes the province of the police, the military, and the administrative machinery of public order. It requires the government to demonstrate that it is preventing attacks on minorities, that it is prosecuting perpetrators of communal violence, and that it is maintaining public order in areas with significant minority populations. All of these are genuine and important functions. But they are not the same as the legal reform necessary to give minority citizens substantive equality before the law. A government can simultaneously prevent communal violence and fail to reform personal law; it can protect the physical security of Hindu temples while leaving Hindu women with no right to inherit their fathers' property.

The securitization of minority protection during the later Hasina years effectively displaced the reform agenda. Civil society organizations that pressed for personal law reform were implicitly told that they should be grateful for the security being provided and should not press for additional measures that were politically inconvenient. The "consultations first" argument was supplemented by a "security first" argument: given the communal tensions in the region and the violence that periodically threatened Hindu communities, now was not the time for controversial legal reforms that might inflame Islamist sentiment.

This argument was used, in various forms, throughout the Awami League period. It was used to argue against personal law reform after the communal violence of 2001. It was used after the attacks associated with the 2006 political crisis. It was used after 2013, when Islamist demonstrations against the war crimes tribunal were accompanied by attacks on Hindu communities. And it was used after the political disturbances of 2017 and 2018. The effect was to create a perpetual deferral: there was always some communal disturbance or political crisis that made this the wrong moment for comprehensive personal law reform.

CHAPTER TWENTY-THREE: THE JULY REVOLUTION, THE CONSTITUTIONAL MOMENT, AND THE WINDOW OF OPPORTUNITY, 2024 TO 2026

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23.1 The July Revolution and Its Significance for the Hindu Community

The student-led uprising of July and August 2024 that toppled the Awami League government of Sheikh Hasina was, as earlier parts of this treatise have examined, both an event of profound political significance and a moment of acute danger for the Hindu community. The uprising itself was not motivated by any specifically communal agenda: it was driven by student anger at discriminatory job quota policies and by a broader popular rejection of fifteen years of what most Bangladeshis experienced as authoritarian misgovernance. The uprising was broad-based, including participants from all religious communities, and its demands were framed in terms of democracy, accountability, and justice rather than in religious or communal terms.

But the immediate aftermath of Hasina's departure on August 5, 2024, created a dangerous political vacuum in which elements hostile to minorities took advantage of the disruption of public order to attack Hindu communities across the country. The scale and nature of these attacks has been examined in earlier parts of this treatise. What requires attention here is the political response to the attacks and the trajectory of the Hindu community's political situation in the period from August 2024 to the February 2026 referendum and beyond.

The interim government led by Professor Muhammad Yunus, which took office on August 8, 2024, faced an immediate challenge: how to respond to the violence against minorities in ways that were both practically effective and politically credible. The government's initial responses were generally positive: Yunus publicly and forcefully condemned the attacks, characterized them as "heinous," and deployed police and military forces to restore order in affected areas. The government established a monitoring cell to track ongoing attacks on minorities and report on the government's response. Senior government officials made public visits to affected communities to express solidarity.

These immediate responses were welcomed by the Hindu community and by international observers. But the more fundamental question, which the immediate responses could not address, was what the change of government meant for the structural situation of the Hindu community, including the question of personal law reform that this Part examines. This question took time to develop an answer.

23.2 The Constitutional Reform Commission and the Hindu Community

The Constitutional Reform Commission (CRC) established by the Yunus interim government in late 2024 under the chairmanship of Professor Ali Riaz was charged with making recommendations for comprehensive constitutional reform. The CRC's report, submitted to the government on January 15, 2025, contained proposals that were significant for the Hindu community's constitutional status.

The CRC's proposals included the strengthening of fundamental rights provisions, the introduction of new protections for ethnic and religious minorities, and the recommendation of institutional mechanisms for ensuring minority representation in the political system. The CRC also proposed changes to the foundational principles of the constitution that would address the

tension created by the Fifteenth Amendment's combination of secularism and Islam as state religion: it proposed to replace the existing formulations with a new framework based on plurality, democracy, and equal citizenship.

The Hindu community's response to the CRC's proposals was complex. Community organizations welcomed the proposed strengthening of minority rights provisions and the proposed removal of the state religion provision. They also called on the CRC to specifically address the personal law reform question, arguing that any constitutional reform package that did not include a mandate for reforming discriminatory personal law was incomplete.

The CRC's final report did include a recommendation that Parliament enact comprehensive reform of personal law for all communities to ensure conformity with the constitutional principle of equality. This recommendation was not a specific mandate for Hindu personal law reform but a general principle that could be applied to all communities' personal law systems. Advocates for Hindu personal law reform welcomed the recommendation but noted that its generality and its framing as a legislative recommendation rather than a direct constitutional requirement meant that its implementation would depend on political will in the new parliament rather than being constitutionally compelled.

23.3 The February 2026 Referendum and Its Significance

The constitutional referendum held on February 12, 2026, in which Bangladeshi voters were asked to approve the "July National Charter" developed by the Constitutional Reform Commission, was a significant event for the Hindu personal law reform question in several respects. The Charter, as approved by the referendum, contained several provisions relevant to the reform agenda.

First, the Charter strengthened the fundamental rights provisions of the constitution, including the equality and non-discrimination provisions, and established a clearer constitutional requirement that legislation conform to these principles. This strengthening of the constitutional basis for challenging discriminatory personal law, while not directly mandating specific legislative reform, created a more robust framework within which reform advocates could press constitutional arguments.

Second, the Charter's approval created a specific mandate for the incoming parliament: the approval meant that the new parliament would function as a "Constitutional Reform Council" for 180 days following its convening, with a specific mandate to enact legislation implementing the Charter's provisions. This mandate was understood by reform advocates as including the personal law reform recommendation of the CRC, and the 180-day clock created a specific timeline within which legislative action needed to occur.

Third, the Charter removed the state religion provision from the constitution, establishing instead a framework of equal citizenship and religious plurality. This constitutional change removed one of the legal arguments that had been used to resist Hindu personal law reform: the argument that the state's Islamic character made it inappropriate for the state to reform the religious law of

another community. Under the new constitutional framework, the state's commitment to equal citizenship and religious plurality provided positive support for reform rather than the ambiguous obstacle represented by the combination of secularism and Islam as state religion.

The referendum approved the Charter by a significant majority, reflecting the broad popular support for constitutional reform that the July Revolution had generated. The Hindu community voted overwhelmingly in support of the Charter, recognizing in its provisions a potential basis for the legal improvements they had long sought.

23.4 The June 2026 Elections and the New Parliament

Following the referendum of February 2026, elections were held in June 2026 for the thirteenth Jatiya Sangsad. As noted in earlier parts of this treatise, the elections resulted in a significant victory for the Bangladesh Nationalist Party, which formed the new government under a leadership substantially different from the Khaleda Zia era in terms of its ideological positioning and its stated commitments to constitutional governance.

For the Hindu personal law reform question, the key question about the new government was whether its constitutional commitments, specifically the 180-day mandate to implement the July Charter's provisions, would translate into legislative action on personal law reform. The early signals from the new government were mixed. The government expressed general support for the Charter's implementation and acknowledged that personal law reform was part of that mandate. But early indications of the government's specific priorities suggested that the political challenges of comprehensive personal law reform were as formidable in 2026 as they had been in previous years.

The civil society organizations that had been advocating for reform for decades approached the new government with a combination of hope and wariness. The hope was based on the Charter's provisions, the 180-day mandate, and the new constitutional framework. The wariness was based on decades of experience with governments that had promised reform and delivered nothing, and with the structural political obstacles that had defeated comprehensive reform in every previous legislative attempt.

The most important variable in this environment was whether the new parliament would treat the 180-day constitutional mandate seriously, as a binding obligation, or whether it would use the "consultations first" mechanism to defer the personal law reform question beyond the 180-day window, effectively converting the constitutional mandate into another in the long series of unfulfilled promises.

23.5 The International Human Rights Dimension: CEDAW, UPR, and the Accountability Framework

The international human rights accountability framework, which has been a consistent but insufficiently heeded source of pressure for Hindu personal law reform since the 1980s, took on new significance in the context of the post-revolution political environment of 2024-2026.

Bangladesh's periodic review under CEDAW, which fell due in 2025, produced concluding observations that were among the most specific and most urgent the Committee had ever issued in relation to Hindu personal law. The Committee's observations noted Bangladesh's ratification of CEDAW more than forty years previously, observed that the reservations to Articles 2 and 16 remained in place despite repeated calls for their withdrawal, and expressed deep concern about the continued operation of discriminatory Dayabhaga personal law. The Committee called for the enactment of comprehensive Hindu personal law reform within a specific timeframe, noting that the constitutional reform process underway in Bangladesh provided a unique opportunity to address this long-standing violation of the convention.

The Committee also specifically addressed the question of the state religion provision, noting with satisfaction that the February 2026 referendum appeared to have removed this provision and calling on the government to ensure that the new constitutional framework was used to address discriminatory personal law as a matter of priority.

Bangladesh's third-cycle Universal Periodic Review, conducted in 2024-2025, added another layer of international pressure. Multiple states, including the European Union member states, Canada, Australia, and several Asian states, made specific recommendations in the UPR process calling for Bangladesh to reform its discriminatory personal law systems, specifically including Hindu personal law. The Bangladeshi government's response to these recommendations was to note them without formally accepting them, maintaining the technical posture of agreement in principle while avoiding any specific commitment to legislative action within any particular timeframe.

The gap between Bangladesh's formal responses to international human rights mechanisms and its actual legislative record is itself a significant indicator of the political dynamics at work. A government that is genuinely committed to reform would accept the recommendations of international human rights bodies with specific commitments and would report in its next cycle on the legislative action taken. Bangladesh's consistent pattern of noting without accepting, of acknowledging the principle without committing to the practice, reflects the same political economy that has produced the domestic record of promise without delivery.

23.6 Civil Society in the Post-Revolution Environment

The July Revolution of 2024 and the subsequent constitutional reform process created a dramatically altered civil society environment in Bangladesh that has significant implications for the Hindu personal law reform agenda. The uprising itself was largely student-led and was connected to a broader culture of civic activism and democratic assertion that had been building in Bangladesh for years. The revolution opened political space, gave moral authority to civil society demands for reform, and created a sense of possibility that had been absent during the authoritarian later years of the Hasina government.

Civil society organizations working on Hindu personal law reform responded to this environment with renewed energy and organization. A coalition of organizations, including Ain O Shalish Kendra, Bangladesh Mahila Parishad, the Bangladesh Hindu Buddhist Christian Unity Council,

and several university-based legal research centers, coordinated a renewed advocacy campaign that connected the Hindu personal law reform question directly to the constitutional reform process. The coalition produced a comprehensive reform proposal, building on the 2006 Law Commission draft and updating it in light of subsequent developments, that it presented to the Constitutional Reform Commission and subsequently to the new parliamentary leadership.

The coalition's proposal differed from previous reform proposals in several important respects. It was more specifically grounded in the constitutional framework produced by the July Charter, arguing that the Charter's specific provisions created a constitutional mandate for reform rather than merely a policy recommendation. It engaged more directly with the traditionalist objections to reform, developing detailed responses to the claims that reform would violate Hindu religious autonomy or undermine the community's cultural distinctiveness. And it drew more extensively on comparative law, particularly the experience of India's 2005 amendments to the Hindu Succession Act and their judicial interpretation in the Vineeta Sharma case, to demonstrate that comprehensive reform was achievable without the dire consequences that opponents predicted.

The diaspora dimension of the advocacy effort also strengthened in the post-revolution period. The large Bangladeshi Hindu diaspora communities in India, the United Kingdom, the United States, Canada, and Australia had been following the political developments in Bangladesh with intense interest and had been mobilizing in support of better protection for the Hindu community. Diaspora organizations used their international connections to raise the profile of the Hindu personal law reform question in international media and in the diplomatic conversations between their host countries and Bangladesh. The diaspora's economic resources, political connections, and media access made it a significant force in the international advocacy dimension of the reform campaign.

23.7 The Shishubar Dhali Case and Judicial Signaling

In this period of political transition, the judiciary of Bangladesh also provided significant signals about the direction of constitutional development relevant to Hindu personal law. The Appellate Division judgment in Shishubar Dhali and Others versus Chitta Ranjan Mondol and Others, reported in the Supreme Court of Bangladesh Bulletin in 2023, represented an important judicial development.

The case concerned the inheritance rights of a daughter's daughter under the Dayabhaga School of Hindu Law. The specific question was whether the Stridhan (women's property) of a grandmother could lawfully devolve upon her granddaughter. The Appellate Division, in a judgment that drew carefully on the primary sources of Dayabhaga law and on the principles of constitutional equality, held that daughters and sons inherit their mother's Stridhan equally and absolutely under the Dayabhaga school. The judgment was notable for several reasons: its careful engagement with the classical texts of Dayabhaga jurisprudence to establish that the egalitarian principle was inherent in the school's own framework; its explicit invocation of the constitutional equality provisions to confirm and strengthen this interpretation; and its clear statement that the historical marginalization of women in Hindu inheritance law was the product of patriarchal misinterpretation rather than faithful application of the Dayabhaga tradition.

The Shishubar Dhali judgment was widely celebrated by reform advocates as a landmark development. It demonstrated that the Supreme Court of Bangladesh was willing to engage seriously with the constitutional equality dimension of Hindu personal law cases and to use constitutional principles to give women's rights a more expansive interpretation than the traditional rules might suggest. It provided advocates with a judicial authority to cite in support of their argument that the constitutional framework already required gender-equal interpretation of Hindu personal law, even before comprehensive legislative reform was enacted.

But the judgment also illustrated the limitations of the judicial route to reform. It addressed a specific question in the law of inheritance of Stridhan; it did not address the broader questions of daughters' rights in joint family property, widows' rights in their husbands' estate, or the divorce and maintenance questions. And it was a constitutional interpretation of existing law rather than a mandate for comprehensive legislative reform: it left in place the framework of classical Dayabhaga rules while giving them a more egalitarian interpretation in the specific context of the case. Comprehensive legislative reform remained necessary to address the full range of discriminatory features in the personal law system, and the Shishubar Dhali judgment, valuable as it was, was not a substitute for such reform.

23.8 The Role of Legal Theorists and the Intellectual Renewal of the Reform Argument

The post-revolution period also saw a notable intellectual renewal in the reform argument, with a new generation of Bangladeshi legal scholars developing more sophisticated theoretical frameworks for understanding and arguing for Hindu personal law reform.

Several intellectual developments in this period deserve particular attention. The first was the growing engagement with postcolonial jurisprudence. Building on the work of scholars like Upendra Baxi, Ratna Kapur, and Prabha Kotiswaran, young Bangladeshi legal scholars began analyzing the Dayabhaga rules not as ancient Hindu tradition but as a colonial construction whose current form owed more to British administrative and epistemic choices than to the authentic Dharmasastra tradition. This postcolonial framing was politically powerful because it reframed the reform debate: rather than proposing to destroy ancient Hindu tradition, reformers were proposing to decolonize a colonial construction that had been imposed on Hindu communities without their consent and against their interests.

The second intellectual development was the growing engagement with feminist jurisprudence. The liberal feminist argument that women's equality required identical legal treatment to men was supplemented, in the new academic writing, by relational feminist and care ethics perspectives that argued for reform on the grounds that the existing rules failed to recognize and protect women's caring labor within the family, and by intersectional feminist perspectives that showed how caste, class, and religious marginalization compounded gender discrimination in ways that required reform strategies sensitive to these intersecting vulnerabilities.

The third intellectual development was the engagement with the capabilities approach of Amartya Sen and Martha Nussbaum. Applied to the Hindu personal law question, the capabilities framework argued that the denial of inheritance rights and divorce rights to Hindu

women constituted a direct assault on their capabilities for economic self-reliance, affiliation, and practical reason. This argument was particularly powerful in its connection to the development policy literature: the denial of inheritance rights was connected to documented outcomes in terms of women's poverty, vulnerability to domestic violence, and exclusion from economic participation, providing empirical as well as normative grounding for the reform demand.

The fourth intellectual development was the engagement with comparative constitutionalism. Bangladeshi legal scholars increasingly engaged with the growing global literature on transformative constitutionalism, on constitutional dialogues between courts and legislatures, and on the conditions under which constitutional reform produces genuine social transformation rather than merely symbolic change. This engagement enriched the quality of the advocacy arguments and provided Bangladeshi advocates with connections to international networks of constitutional lawyers and scholars.

CONCLUSION TO PART ELEVEN

The legislative history of Hindu personal law reform in Bangladesh, traced across fifty-five years in this Part, is a history of persistent failure that has multiple causes operating at multiple levels simultaneously. It is a history of political calculation consistently prioritizing short-term electoral advantage over long-term constitutional obligation. It is a history of civil society organizations building slowly and persistently toward a comprehensive reform agenda while being repeatedly denied the legislative outcome their advocacy demanded. It is a history of international human rights mechanisms providing consistent pressure that the state has consistently noted and consistently ignored. And it is a history of legal intellectuals developing ever more sophisticated arguments for reform that have not yet found the political conditions necessary for their implementation.

But it is also, particularly in the most recent period, a history that may be approaching a turning point. The combination of the July Revolution of 2024 and the constitutional transformation that followed it, the CRC recommendations, the February 2026 referendum, the new constitutional framework, and the parliamentary mandate of the new 13th Jatiya Sangsad has created a political and constitutional environment that is more favorable to comprehensive Hindu personal law reform than any that has existed in Bangladesh's history. Whether this environment will produce the reform that justice demands, or whether it will produce another iteration of the familiar pattern of promise without delivery, depends on choices that are yet to be made.

The analysis developed in this Part suggests that three conditions must be met for the current opportunity to be realized. The first is that the political parties controlling the new parliament must treat the constitutional mandate seriously, not as a formal obligation to be satisfied through minimal legislative gestures, but as a genuine commitment to the substantive equality of all Bangladeshi citizens before the law. The second is that the civil society advocacy network must maintain its pressure and coordination, using the constitutional moment to push for

comprehensive reform rather than accepting the partial measures that previous governments have offered as substitutes. The third is that the international human rights accountability mechanisms must be used effectively to maintain external pressure on the government at a moment when domestic political pressures are constantly pulling in the direction of deferral.

None of these conditions can be taken for granted. The structural obstacles to reform that have operated throughout Bangladesh's history, the path dependencies of accumulated institutional inertia, the political dynamics of majoritarian democracy and minority vulnerability, the strategic calculations of political parties managing complex electoral coalitions, have not been dissolved by the July Revolution or by the constitutional referendum. They have been disrupted and temporarily weakened, but they have not been eliminated. The window of opportunity is open; whether it will be used before it closes again is the central question of the present historical moment.

Part Twelve of this treatise will examine the specific substantive reform proposals that the new parliament should enact, developing in detailed legislative terms the content of the comprehensive Hindu Personal Law Code that this treatise proposes as the appropriate response to the constitutional mandate established in the preceding Parts.

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Part Eleven of this treatise concludes here. Part Twelve will present the detailed substantive content of the proposed comprehensive Hindu Personal Law Code for Bangladesh, examining in legislative detail the reforms required in the domains of marriage, divorce, inheritance, adoption, and maintenance, with comparative reference to the Indian and Nepalese models and with specific attention to the constitutional requirements of the new July Charter framework.

PART TWELVE

THE PROPOSED COMPREHENSIVE HINDU PERSONAL LAW CODE FOR BANGLADESH: SUBSTANTIVE CONTENT, LEGISLATIVE ARCHITECTURE, THEORETICAL FOUNDATIONS, AND DETAILED PRESCRIPTION ACROSS ALL DOMAINS OF HINDU PERSONAL LAW

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PREFATORY NOTE TO PART TWELVE

Part Eleven of this treatise traced, across seven chapters and more than fifty years of political history, the story of why Bangladesh has failed to enact the comprehensive reform of Hindu personal law that justice demands, that the constitution requires, and that its international human rights obligations compel. We examined the first decade of missed opportunity, the constitutional distortions of the military period, the flowering of civil society advocacy in the democratic transition, the specific anatomy of the failed Hindu Code Bill proposals, the limited and ultimately inadequate Hindu Marriage Registration Act of 2012, the paradox of promise and paralysis under fifteen years of Awami League government, and the new constitutional moment created by the July Revolution of 2024 and the constitutional referendum of February 2026.

Part Twelve now turns from diagnosis to prescription. It is one thing to identify what is wrong with the existing law, to trace the political history of reform's failure, and to establish the constitutional and philosophical case for change. It is another, and in some respects more demanding, thing to say precisely what the reformed law should look like: what its detailed provisions should be, how those provisions should be structured, what the technical legal drafting should accomplish, what the theoretical principles underlying specific choices should be, how the reformed law should relate to the classical Dayabhaga tradition it is reforming, and how it should be implemented in ways that ensure its benefits actually reach the people it is designed to serve.

This Part attempts to do all of these things. It proposes, with a degree of specificity and detail not previously available in the academic literature on this subject, the content of a comprehensive Hindu Personal Law Code for Bangladesh. It does so in seven chapters corresponding to the seven principal domains of Hindu personal law that require comprehensive reform: the overall philosophy and architecture of the Code; the law of marriage; the law of divorce; the law of inheritance and succession; the law of adoption; the law of maintenance; and the provisions governing implementation, transition, enforcement, and institutional support. Throughout, the analysis is informed by the Dayabhaga jurisprudential tradition, by the comparative models of India and Nepal, by the constitutional framework of the July Charter, by the international human rights standards of CEDAW and related instruments, and by the philosophical frameworks developed in the earlier parts of this treatise.

The proposed Code is offered not as a final legislative text but as an intellectual framework and starting point for the legislative drafting process that the new parliament must undertake. Specific provisions will require technical legal refinement, community consultation, and parliamentary deliberation. But the framework offered here provides the substantive content, the theoretical justification, and the comparative reference points that that process requires. It is, in the fullest sense, a blueprint for the comprehensive reform that is long overdue.

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CHAPTER TWENTY-FOUR: THE PHILOSOPHY, ARCHITECTURE, AND GENERAL PRINCIPLES OF THE PROPOSED HINDU PERSONAL LAW CODE

24.1 The Foundational Choice: Codification as Legal Strategy

The first and most fundamental question in designing a comprehensive reform of Hindu personal law in Bangladesh is whether to pursue reform through codification or through some other legal strategy. As Part Eleven demonstrated, the absence of codification has been one of the primary technical obstacles to effective reform: the existing law is scattered across classical texts, colonial judicial decisions, statutory modifications of limited scope, and local customs, creating a system of such complexity and obscurity that most litigants and many lawyers cannot navigate it effectively. Codification, the replacement of this fragmented and inaccessible body of law with a single statutory instrument that states the law clearly and comprehensively, is both a technical necessity and a political statement.

The case for codification is overwhelming on both practical and theoretical grounds. On practical grounds, it is simply the most effective way to make the reformed law accessible to the people it governs: a statutory code, drafted in clear and contemporary language, translated into Bangla from the outset, and made available through legal aid organizations and community networks, can reach the rural Hindu woman who has no access to a Sanskrit text and no lawyer capable of interpreting colonial precedents. Codification also produces uniformity: it eliminates the regional variations, the competing interpretations, and the doctrinal uncertainties that have made the existing law so difficult to apply consistently. And it facilitates enforcement: courts applying a statutory code know what the law is and can apply it predictably, reducing the scope for manipulation and bias that the existing system's obscurity allows.

On theoretical grounds, codification is consistent with the most sophisticated understanding of what legal reform requires in the postcolonial context. The postcolonial critique of colonial law, developed by scholars including Upendra Baxi and Ratna Kapur and examined in earlier parts of this treatise, argues that the existing Hindu law is not authentic ancient tradition but colonial construction. If this is correct, then the appropriate response is not to preserve the colonial construction in statutory form but to reconstruct the law on the basis of a genuine understanding of the Dharmic tradition and the contemporary constitutional values of equality and dignity. Codification provides the legislative vehicle for this reconstruction.

The theoretical concern sometimes raised against codification is that it will destroy the pluralism and dynamism of the customary law tradition, replacing a living system that adapts to local conditions with a rigid statutory text that cannot accommodate diversity. This concern deserves respectful engagement. The Dharmasastra tradition has always recognized that Dharma varies with time, place, and circumstance, and that any system of law that ignores these variations is not truly Dharmic in its orientation. A code that imposes a single national standard on a community whose practices vary significantly across regions, castes, and classes risks exactly this kind of rigid uniformity.

But the concern can be addressed in the design of the code rather than by abandoning codification altogether. The proposed Code should be designed with sufficient flexibility to accommodate legitimate customary variation while establishing the non-negotiable minimum standards of gender equality and procedural fairness that the constitution and international human rights law require. It should include provisions recognizing the validity of local customs where those customs do not violate constitutional principles, while making clear that no custom can override the fundamental rights guaranteed by the Code.

24.2 Naming, Scope, and the Question of Religious Autonomy

The proposed Code should be titled, for reasons that are at once technical and symbolic, the Hindu Personal Law Code of Bangladesh, or alternatively the Hindu Family and Succession Code. The choice of title matters because it signals the Code's relationship to the religious tradition from which it derives. The title should make clear that this is the law of a specific community, not a secular family code of universal application. This is important for two reasons. First, the Code derives its content, in substantial part, from the Dayabhaga jurisprudential tradition, adapted to the requirements of constitutional equality and international human rights. It is not a secular family code that happens to apply to Hindus; it is a reformed version of Hindu law that retains its connection to the Dayabhaga tradition while cleansing it of its discriminatory features. Second, the framing of the Code as Hindu law rather than secular law reduces the political resistance from Hindu traditionalists who oppose any measure that appears to separate Hindus from their religious law.

The scope of the Code should be comprehensive: it should govern all matters of Hindu personal law in Bangladesh, including marriage, divorce, maintenance, adoption, inheritance, and related matters. The Code should apply to all persons who are Hindu by religion, whether by birth, conversion, or reconversion. The question of who qualifies as Hindu for the purposes of the Code requires careful definitional work that the Code's drafting must address. The traditional definitions relied on by colonial courts, essentially circular definitions based on the community's practice and self-identification, are inadequate for a modern statutory instrument. The Code should adopt a clear, non-circular definition that identifies Hindus by reference to religious identity rather than by exclusion (that is, by defining who is not Muslim, Christian, or otherwise) and that recognizes the diversity within the broad community of persons who identify with Hindu religious and cultural traditions.

The Code should also address the question of its relationship to other legal provisions. Several existing statutes touch on Hindu personal law in Bangladesh: the Hindu Women's Right to Property Act 1937, the Hindu Law of Inheritance (Amendment) Act 1929, the Hindu Married Women's Right to Separate Residence and Maintenance Act 1946, and the Hindu Marriage Registration Act 2012. The Code should either repeal these statutes (where their provisions are superseded by the Code's more comprehensive treatment) or explicitly preserve them (where they provide protections not covered by the Code) or amend them (where their provisions are largely retained but require modification to conform with the Code's principles). The drafting of these transitional and supersession provisions will require careful attention to avoid creating gaps or contradictions in the legal framework.

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24.3 The Constitutional Grounding of the Code's Principles

Every substantive provision of the proposed Code should be grounded in, and explicitly connected to, the constitutional principles of the July Charter as confirmed by the February 2026 referendum. This explicit constitutional grounding serves both a legal and a political function. Legally, it ensures that the Code's provisions are protected against constitutional challenge: if the provisions are expressly designed to implement constitutional requirements, challenges to their validity become challenges to the constitutional requirements themselves, which are on much stronger ground. Politically, it frames the Code as a constitutional obligation rather than a political choice, making it harder for opponents to characterize it as a partisan or ideological project.

The constitutional principles that should explicitly ground the Code's provisions include the following. The principle of equality before the law, as guaranteed by Article 27 of the constitution and as strengthened by the July Charter's expanded fundamental rights provisions, requires that the Code's rules apply equally to men and women except where biological differences make differential treatment genuinely justified. The principle of non-discrimination on grounds of sex, as guaranteed by Article 28, requires that the Code eliminate all provisions that give women fewer rights than men in equivalent situations without compelling justification. The principle of human dignity, which the July Charter has made an explicit foundational value of the constitutional order, requires that the Code treat all persons as autonomous agents capable of making decisions about their own lives rather than as objects of legal protection to be managed by male guardians. And the principle of substantive equality, which goes beyond formal equality to require that the law actively address the structural conditions that produce inequality, requires that the Code include not merely equal formal rights but enforcement mechanisms designed to ensure that those rights are exercised in practice.

The connection between the proposed Code and the capabilities framework developed by Amartya Sen and Martha Nussbaum, which was examined in Part Ten and which has become increasingly influential in constitutional design globally, should be made explicit in the Code's statement of purposes. The Code should state that its purpose is not merely to provide a formal legal framework for Hindu personal law but to ensure that all persons governed by it have the real capability to exercise their rights and to live lives of genuine freedom and dignity. This capabilities-based statement of purpose will have interpretive significance: courts applying the Code should interpret its provisions in the manner most consistent with enhancing rather than constraining the capabilities of the persons it governs, particularly those who have historically been most constrained.

24.4 The Dayabhaga Tradition and the Internal Resources for Reform

A distinctive and philosophically significant feature of the proposed Code is that it should derive its content not solely from external constitutional and international human rights standards but also from the internal resources of the Dayabhaga tradition itself. This is not merely a strategic concession to traditionalist sentiment, though it has that political advantage. It reflects a genuine intellectual position: that the Dayabhaga tradition, properly understood in its own terms and

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freed from the colonial distortions imposed upon it, contains resources that support rather than resist the reforms the Code proposes.

The Shishubar Dhali judgment of the Bangladesh Appellate Division in 2023, examined in Part Eleven, provides the clearest recent example of how the Dayabhaga texts can be read to support gender-equal outcomes. The court's reading of Jimuta Vahana's Dayabhaga to establish that daughters and sons inherit their mother's Stridhan equally and absolutely was not an exercise in making the texts say what the court wanted them to say; it was a careful engagement with the primary sources that revealed the egalitarian potential embedded in the tradition. The academic work of scholars like Werner Menski, who has argued for a reading of Hindu law that takes seriously its internal pluralism and its potential for Dharmic adaptation, supports this approach.

The proposed Code should therefore include, in its preamble and in its statement of foundational principles, an explicit acknowledgment of the Dayabhaga tradition as a living jurisprudential tradition capable of development and adaptation in accordance with its own internal logic. This acknowledgment serves multiple purposes. It preempts the traditionalist objection that the Code is an external imposition on Hindu law; it invites courts to interpret the Code's provisions in light of the Dayabhaga tradition's own principles; and it frames the Code's reforms as expressions of what the tradition's best self demands rather than as violations of what it requires. The result is a Code that is simultaneously constitutional, international, and Dharmic: grounded in all three normative orders simultaneously.

24.5 The Internal Structure of the Proposed Code

The proposed Hindu Personal Law Code should be structured in six substantive parts, preceded by a general part setting out definitions, scope, and interpretive principles. The six substantive parts should address marriage, divorce, maintenance, adoption, inheritance and succession, and enforcement and implementation. Each part should contain a statement of its specific governing principles, substantive provisions, procedural provisions, and provisions on remedies and enforcement.

The Code should be drafted in Bangla as the primary language, with an English translation for international reference purposes. Previous statutory reforms in Bangladesh relating to Hindu law have been drafted primarily in English with Bangla translations of secondary importance, which has made them less accessible to the community they govern. Drafting the Code primarily in Bangla, in clear and contemporary language, is an expression of the commitment to accessibility that the Code's capabilities-based purpose statement requires.

The Code should include a statement of interpretive principles that guides courts in applying its provisions. These principles should include: the requirement to interpret the Code in a manner consistent with its constitutional foundations and with the Dayabhaga tradition's Dharmic values; the requirement to prefer interpretations that enhance the capabilities and agency of all persons governed by the Code over interpretations that constrain them; the requirement to take account of the specific vulnerability of women and children in applying the Code's provisions; and the requirement to have regard to the social context of the Code's application, including the power

dynamics within Hindu families that may make formally equal rights difficult to exercise in practice.

CHAPTER TWENTY-FIVE: THE PROPOSED REFORM OF HINDU MARRIAGE LAW IN BANGLADESH

25.1 The Current State of Hindu Marriage Law: A Comprehensive Critique

Before prescribing reform, the current state of Hindu marriage law in Bangladesh requires systematic critical examination. Hindu marriage law in Bangladesh is governed primarily by classical Dayabhaga rules as received into colonial judicial practice, supplemented by the limited provisions of the Hindu Marriage Registration Act 2012, which governs only the procedural question of registration and says nothing about the substantive requirements of a valid marriage. The resulting legal situation is one of extraordinary incompleteness, uncertainty, and in many respects, injustice.

Under the existing law, the concept of a valid Hindu marriage is defined primarily by reference to religious ceremony rather than to any statutory requirements. The essential ceremonies for a valid Hindu marriage, as recognized by the Bangladesh Supreme Court in Amulya Chandra Modak vs. The State, are the performance of the Vivaha Homa or Jagyo (invocation before the sacred fire) and the Saptapadi (the taking of seven steps around the sacred fire). If these ceremonies are performed, the marriage is valid regardless of whether the parties consented freely, regardless of their ages (subject to the very limited protections of the Child Marriage Restraint Act, which applies to all communities but is poorly enforced), regardless of whether one party was already married, and regardless of whether the marriage was registered.

This ceremonial definition of marriage has several serious consequences. First, it makes proof of marriage extraordinarily difficult in the absence of registration: a marriage that was solemnized privately without registered witnesses and without a certificate can be denied retroactively by a party who has an interest in denying it, leaving the other party, almost invariably the wife, without legal standing to claim the rights that marriage should carry. This is not merely a theoretical possibility; it is a documented reality. Legal aid organizations operating in Bangladesh have documented numerous cases in which women whose marriages had not been registered were unable to prove their marital status when their husbands denied the marriage in order to avoid maintenance obligations or to enable a de facto second marriage.

Second, the ceremonial definition of marriage makes no provision for minimum age requirements that go beyond the general provisions of the Child Marriage Restraint Act. While the Act applies to all marriages in Bangladesh regardless of religion, its enforcement within the Hindu community has been inconsistent, and there is no Hindu-law-specific provision that establishes the minimum ages required for a valid Hindu marriage and that connects violation of those minimum ages to the invalidity of the marriage rather than merely to a criminal penalty imposed on the person who arranged it. Third, the existing law does not explicitly prohibit

polygamy among Hindu men. Classical Dayabhaga law permits a Hindu man to take multiple wives, and the absence of any statutory prohibition means that Hindu polygamy remains technically legal in Bangladesh, despite being contrary to the constitutional equality principles and to the practice that is virtually universal among educated Hindu families.

Fourth, the existing law does not require any form of consent from either party to the marriage. While colonial case law has developed the principle that mental capacity is a requirement of validity and that consent obtained by fraud or force vitiates the marriage, there is no positive requirement of free and informed consent as a condition of validity. This omission is particularly significant for women: in a social environment where family and community pressure on girls to marry in accordance with family preference rather than personal choice remains significant, the absence of a positive consent requirement means that the law provides no protection against marriages arranged without genuine consent.

Fifth and most significantly for present purposes, the existing law contains no provision for divorce. This is examined in detail in the next chapter, but the absence of divorce law must be understood as part of the critique of the marriage law, because the rules governing entry into marriage and exit from marriage form a coherent legal framework. A marriage law that permits entry into the institution without clear conditions but prohibits exit from it regardless of the circumstances of the marriage constitutes a profound imbalance that works systematically against the interests of women.

25.2 Comparative Reference: The Indian Hindu Marriage Act 1955 and Its Lessons

The Indian Hindu Marriage Act of 1955 remains the most important comparative reference for the reform of Hindu marriage law in Bangladesh, both because it represents the most thoroughly tested legislative model for a reform of this kind and because it was designed specifically for the Hindu Dayabhaga and Mitakshara traditions that Bangladesh shares with the relevant Indian states.

The 1955 Act accomplished several things that the proposed Bangladeshi Code must accomplish. It defined the conditions of a valid Hindu marriage by reference to both ceremony and statutory requirements, creating a hybrid model that preserves the religious character of Hindu marriage while ensuring that the ceremonial form does not override the substantive requirements of consent, monogamy, and minimum age. It established that a marriage in which either party had a living spouse at the time of solemnization was void, effectively prohibiting polygamy as a statutory matter while leaving the religious ceremonies in place. It established a minimum age for marriage that, at the time of original enactment, was fifteen for women and eighteen for men and that has subsequently been raised in line with international standards. It created a system for the registration of marriages that was initially voluntary but has been made compulsory in many Indian states through state legislation. And it established a framework for the judicial dissolution of marriage that the next chapter will examine.

The lessons from the Indian experience with the 1955 Act are both positive and cautionary. The positive lessons include the demonstration that a comprehensive statutory framework for Hindu

marriage law is legally workable, that it can be designed in ways that respect the religious character of Hindu marriage while establishing substantive equality requirements, and that over time, such a framework can change the social practices of the community it governs, even where initial resistance from traditional elements was significant. The cautionary lessons include the demonstration that statutory reform, by itself, is not sufficient to produce change in social practices: the 1955 Act's prohibition of child marriage did not eliminate child marriage in India, and its requirement of monogamy did not eliminate polygamy in all communities, demonstrating that legislative reform must be accompanied by sustained enforcement, legal literacy, and social change to be effective.

The Bangladesh situation has both similarities to and differences from the Indian context that the Code's design must take into account. The similarities include the shared Dayabhaga tradition in the relevant regions, the similar patterns of gender inequality in marriage and family practices, and the similar set of rights violations that have been documented. The differences include the minority status of the Hindu community in Bangladesh, which creates specific political dynamics and specific social vulnerabilities that are different from those facing the majority Hindu community in India; the specific constitutional framework of the July Charter, which differs from the Indian constitutional framework in important respects; and the specific political and institutional context of Bangladesh's legislative process, which requires reform proposals to be designed with the specific obstacles and opportunities of that context in mind.

25.3 Proposed Provisions on the Conditions of a Valid Hindu Marriage

The proposed Code's provisions on the conditions of a valid Hindu marriage should address five elements: the parties to the marriage, the prohibited degrees of consanguinity and affinity, the age requirements, the requirement of consent, and the ceremonial requirements for solemnization.

On the parties to the marriage, the Code should provide that a valid Hindu marriage may be contracted between a man and a woman, both of whom are Hindus at the time of the marriage (subject to the provisions on inter-faith marriages in the Special Marriage Act), and neither of whom has a living spouse at the time of the marriage. This provision establishes the monogamy requirement and makes it a condition of validity rather than merely a ground for criminal prosecution: a marriage contracted in violation of the monogamy requirement will be void, not merely voidable, and neither party will acquire or retain the rights associated with marriage under such a void union. The Code should make clear that this prohibition applies symmetrically to men and women, addressing the historical asymmetry under which only men's prior marriage was considered relevant to validity.

On the prohibited degrees of consanguinity and affinity, the Code should follow the classical Dayabhaga rules with the modification required by the constitutional equality principle: it should prohibit marriage between persons related within the prohibited degrees of consanguinity (which the Dayabhaga tradition defines with reference to the Sagotra rules) and should also address the question of customary exceptions to these prohibitions in communities where marriage between certain classes of relatives is customary. The treatment of customary exceptions should establish

a principle: local customs permitting marriage within the prohibited degrees may be recognized if they are established, continuous, and not repugnant to the constitutional principles of the Code; but no custom can be recognized that involves the marriage of persons below the minimum age or of persons who have not given free consent.

On age requirements, the Code should establish a minimum age of eighteen for both men and women. This represents an increase from the current position under the Child Marriage Restraint Act, which sets the minimum age at eighteen for women and twenty-one for men, but uses a criminal sanction framework rather than invalidating marriages below the minimum age. The proposed Code should make the minimum age of eighteen a condition of validity for the marriage itself: a marriage in which either party has not attained eighteen years of age at the time of solemnization will be voidable at the option of the underage party and may be declared void by a court on the application of that party. This provision aligns the Hindu marriage law with the international standard established by the Convention on the Rights of the Child and with Bangladesh's own obligations under that convention, and it removes the existing anomaly under which child marriage within the Hindu community is technically illegal but the marriage remains valid despite the illegality.

On the requirement of consent, the Code should introduce a positive requirement that both parties must have given free and informed consent to the marriage as a condition of its validity. The Code should define consent as free from coercion, undue influence, fraud, and mistake as to the nature of the ceremony or the identity of the other party. This definition should be broadly interpreted by courts to include social and family pressure of the kind that effectively removes a woman's practical freedom to refuse, even if no explicit force is employed. The Code should establish that a marriage contracted without the free consent of either party is voidable at the option of the party whose consent was not free, and that an application to void such a marriage may be made within a specified period after the marriage or after the party becomes aware of the circumstances vitiating consent.

On the ceremonial requirements for solemnization, the Code should preserve the religious character of Hindu marriage by requiring that the marriage be solemnized in accordance with the customary rites and ceremonies of either party. The essential elements recognized by the Supreme Court in Amulya Chandra Modak, namely the Vivaha Homa and the Saptapadi, should be preserved as the primary ceremonial requirements, while recognizing that specific communities may have customary variations on these ceremonies that are equally valid. The Code should not prescribe any specific ceremony but should require that the solemnization follow a recognized Hindu ceremonial form, distinguishing Hindu marriages governed by the Code from civil marriages that might be contracted under other legislation.

On registration, the Code should make registration of Hindu marriages compulsory rather than voluntary. The existing Hindu Marriage Registration Act 2012's voluntary registration provision has failed, as Part Twenty-One demonstrated, to provide meaningful protection to the women for whose benefit registration is most important. Compulsory registration, with appropriate transitional provisions giving couples whose marriages predate the Code time to register, should be established as the standard. The registration requirement should be integrated with the

ceremonial requirements: the officiating priest or religious authority should be required to ensure that the marriage is registered, and failure to register should result in both a civil penalty and a procedure for retrospective registration.

25.4 The Grounds and Consequences of Marriage Invalidity

The proposed Code must address carefully the distinction between void and voidable marriages, because the consequences of this distinction for the parties' rights are significant. Under the existing law in Bangladesh, this distinction is not clearly established in statutory form, and the courts have had to develop the relevant principles from colonial case law that is not always consistent or appropriate.

The Code should establish that a marriage is void where it violates the fundamental conditions of validity: where either party had a living spouse at the time of the marriage; where the parties are within the prohibited degrees of consanguinity in circumstances not covered by recognized custom; or where either party is below the minimum age and neither party applies to have the marriage treated as voidable. A void marriage has no legal effect from the outset: neither party acquires any legal rights from a void marriage, no children are illegitimate as a result of it, and the courts should not treat it as having any of the consequences of a valid marriage.

The Code should establish that a marriage is voidable where the conditions for validity are technically met but where circumstances affecting the quality of the parties' consent or capacity vitiate the marriage in ways that the law should remedy. These circumstances include: unsoundness of mind at the time of the marriage; impotence that renders the marriage incapable of consummation; consent obtained by fraud or misrepresentation; consent obtained by force or undue influence; and underage marriage. A voidable marriage remains valid unless and until it is annulled by a court on the application of either party; it differs from a void marriage in that it has legal effect until it is annulled, and the courts have discretion, in appropriate circumstances, to refuse annulment where it would cause injustice to an innocent party.

The provisions on the consequences of annulment must address the position of children born of the annulled marriage. The Code should expressly provide that children born of a void or voidable marriage are legitimate and have full inheritance rights under the Code. This provision brings the Code into line with the modern approach to legitimacy that has been adopted across most common law jurisdictions and that is required by the constitutional principle that children should not be disadvantaged by circumstances beyond their control.

25.5 The Special Marriage Act 1872 and Its Reform

The Special Marriage Act of 1872, which governs marriages between persons of different religions or between persons who wish to contract a civil marriage without reference to their religious laws, requires specific attention in any comprehensive treatment of Hindu marriage law reform in Bangladesh. The Act currently requires that any person contracting a marriage under its provisions must declare that they do not profess the Hindu, Muslim, Buddhist, Sikh, Jaina, Parsi, or Christian religion. This effectively means that a Hindu who wishes to marry a Muslim

or a person of any other faith must formally renounce their religious identity as a condition of contracting the marriage under the Act.

This faith renunciation requirement is constitutionally problematic on several grounds. It violates the freedom of religion guaranteed by Article 41 of the constitution by creating a legal requirement of religious renunciation as a condition of accessing a civil institution. It discriminates on grounds of religion by creating a requirement that applies specifically to persons of religious faith, effectively penalizing religious identity. And it is incompatible with the July Charter's principle of equal citizenship, which requires that all citizens have equal access to legal institutions regardless of their religious identity.

The Code should therefore include a provision amending the Special Marriage Act to remove the faith renunciation requirement and to enable Hindus, Muslims, and persons of other faiths to contract civil marriages under the Act without renouncing their religious identities. This amendment has been advocated by civil society organizations for many years and has been consistently blocked by religious traditionalists across communities. The constitutional framework of the July Charter makes this amendment not merely desirable but constitutionally required.

CHAPTER TWENTY-SIX: THE PROPOSED INTRODUCTION OF HINDU DIVORCE LAW IN BANGLADESH

26.1 The Current Legal Vacuum and Its Consequences

No feature of the existing Hindu personal law in Bangladesh is more egregious in its consequences for women than the complete absence of any right of divorce. As the sources surveyed at the beginning of this Part confirm, Hindu personal law in Bangladesh does not recognize divorce under any circumstance. A Hindu marriage, once validly solemnized, is binding on both parties for their lifetimes, regardless of what happens within the marriage. There is no legal mechanism by which a Hindu wife who is subjected to violence, cruelty, desertion, or any other form of marital breakdown can obtain a legal dissolution of her marriage and thereby acquire the legal freedom to rebuild her life.

The consequences of this legal vacuum are profound and well-documented. First, women trapped in abusive or failed marriages have no legal exit. They can obtain judicial separation under the Hindu Married Women's Right to Separate Residence and Maintenance Act 1946, which allows a wife to live separately from her husband and to claim maintenance under specific circumstances. But judicial separation does not dissolve the marriage: a separated Hindu wife remains legally married, cannot remarry, cannot assert the rights of an unmarried person, and remains bound to her husband by a legal tie that has no practical content. Many women in this situation are, in effect, legally imprisoned in failed marriages from which they cannot escape.

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Second, the absence of divorce law creates conditions that drive practices the law ostensibly opposes. Many Hindu couples in Bangladesh who have experienced marital breakdown resolve their situation through informal arrangements, which in practice often means the husband simply abandons his wife and enters into a new relationship, either with a second wife or with a partner recognized in social practice but not in law. The de facto second wife in such a situation has no legal protection at all: she has no right to maintenance, no right to inherit, no right to claim any of the benefits that legal marriage would carry. And the first wife, though legally married, is abandoned without practical support in circumstances where the law provides her with no remedial mechanism other than the limited maintenance provisions that are themselves inadequately enforced.

Third, the absence of divorce law has driven some Hindu women to convert to Islam as a strategy for escaping failed marriages. Under Islamic law, a Muslim woman can seek judicial divorce on several grounds. A Hindu woman who converts to Islam and seeks judicial divorce under the applicable Muslim family law thereby acquires, at the cost of her religious identity, the legal freedom that the law denies her as a Hindu. This perverse incentive structure, in which the law's failure to reform Hindu personal law drives conversions that further reduce the size of the Hindu community, is among the most concrete demonstrations of the human cost of legislative inaction.

Fourth, the absence of divorce law contributes to child marriage, because parents who are uncertain whether they will be able to extract their daughters from unsuitable marriages after the fact have less ability to resist pressure to arrange marriages at young ages when family and community authority is strongest and the girl's personal agency is weakest. The availability of divorce as a realistic option for adult women who find themselves in unsuitable marriages provides a backstop that, while not eliminating the pressure for early marriage, at least reduces its urgency and provides a corrective mechanism.

26.2 The Philosophical Objection and Its Answer

The primary objection to introducing divorce into Hindu personal law is the philosophical and theological one: that Hindu marriage is a sacrament, not a contract, and that the indissolubility of the matrimonial bond is a fundamental principle of Hindu religious tradition that the state has no business overriding. This objection is made not only by religious traditionalists but by some Hindu scholars who argue that the sacramental character of Hindu marriage is one of the distinctive and valuable features of the tradition that should not be sacrificed to the demands of modernity.

The objection deserves a full and serious answer. There are several dimensions to that answer.

The first dimension is textual and traditional. The claim that Hindu marriage is universally and irrevocably indissoluble under the classical tradition is historically inaccurate. While the dominant textual tradition, particularly as interpreted by the major Dharmasastra commentators, does emphasize the permanent and sacramental character of Hindu marriage, there are other currents within the tradition that recognize the practical reality of marital breakdown and provide

mechanisms for addressing it. The Arthashastra, attributed to Kautilya, recognizes divorce by mutual consent in several categories of marriage. The Naradasmriti explicitly recognizes the right of a woman to leave a husband who is impotent, who has abandoned her, who has taken a second wife without justification, or who has become a criminal. And the Parasarasmriti, which is particularly relevant in the Dayabhaga context because of its specific application to the Kaliyuga, provides several grounds on which a woman may leave her husband and remarry.

The colonial judicial system, in constructing the unified Hindu law that Bangladesh has inherited, suppressed these more permissive elements of the tradition and elevated the most conservative interpretation of the indissolubility principle. This suppression was partly the product of British assumptions about what Hindu law ought to look like, and partly the result of the influence of Brahmanical scholars who had their own reasons for emphasizing the indissolubility principle. The Dayabhaga tradition as received into colonial law is therefore not the authentic tradition of universal Hindu practice but a selection from that tradition that emphasized its most restrictive elements.

The second dimension of the answer is the distinction between religion and law. Even if it were true that Hindu religious tradition absolutely prohibits divorce, this would not settle the question of whether the state should recognize divorce as a matter of civil law. The state's recognition of divorce does not compel any individual to divorce, does not require Hindu religious authorities to conduct divorce ceremonies, and does not declare that divorced persons are not spiritually bound to each other in the eyes of Hindu religious doctrine. What it does is provide a legal mechanism by which parties to a failed marriage can obtain the legal freedom to rebuild their lives. The state's provision of this legal mechanism is entirely consistent with the freedom of religion guarantee: Hindu persons who believe that their religious tradition prohibits divorce are free not to use the legal mechanism; the state simply ensures that those who wish to use it are not legally prevented.

The third dimension of the answer is the constitutional one. The denial of the right of divorce to Hindu women specifically, while it is available to women of all other major religious communities in Bangladesh under their respective personal laws, constitutes discrimination on grounds of religion that the constitution prohibits. A Hindu woman in Bangladesh has no right to divorce; a Muslim woman does, through the judicial divorce provisions of the Dissolution of Muslim Marriages Act 1939; a Christian woman does, through the Divorce Act 1869. This differential treatment of women based solely on their religious identity is exactly the kind of discrimination that Article 28 of the constitution prohibits.

The fourth dimension of the answer is the comparative one. India introduced divorce into Hindu personal law in 1955 through the Hindu Marriage Act. That Act has been in force for more than seventy years. The claim made by those who opposed its introduction, that it would destroy Hindu family life and undermine the spiritual and social cohesion of the Hindu community, has proven empirically false. Hindu families in India have not been destroyed by the availability of divorce; Hindu religious and cultural life has not been undermined; and the specific benefits of divorce availability to women in abusive or failed marriages have been real and significant. The

Indian experience demonstrates that the introduction of divorce into Hindu personal law is achievable, workable, and beneficial.

26.3 Proposed Provisions on Divorce: Grounds, Procedure, and Consequences

The proposed Code's divorce provisions should be designed with three objectives: to provide effective relief to persons in truly failed marriages; to create procedural mechanisms that ensure the decision to divorce is not impulsive or uninformed; and to ensure that the economic and parental consequences of divorce are addressed fairly and in a manner that does not leave either party, particularly the economically weaker party who is statistically likely to be the wife, in a state of destitution.

On the grounds for divorce, the Code should adopt a broadly similar framework to that of the Indian Hindu Marriage Act, adapted to the specific Bangladeshi context. The grounds should be divided into fault-based grounds and no-fault grounds. The fault-based grounds should include: adultery committed by the other spouse; cruelty, defined broadly to include both physical and mental cruelty and to encompass patterns of behavior that make it unsafe or undesirable for the applicant to live with the respondent; desertion for a period of at least two years immediately preceding the petition; conversion of the respondent to a religion other than Hinduism; unsoundness of mind of a kind that makes normal married life impossible; incurable and communicable disease; and renunciation of the world by entering a religious order. The no-fault ground should allow divorce by mutual consent after a period of twelve months' separation with both parties agreeing to the dissolution.

The proposed Code should also include, as a ground for divorce available only to wives, the fact that the husband has contracted a prior or subsequent marriage in violation of the monogamy requirement. This additional ground recognizes the specific vulnerability of women who have been subjected to polygamy and who need an accessible legal mechanism for dissolving a marriage that has been made into one in a series.

The procedure for divorce should require court involvement in all cases, distinguishing it from the talaq procedure available under Muslim personal law. This is not a value judgment about the relative merits of different divorce procedures but a recognition of the specific context: in a situation where women's literacy and legal awareness are limited, where family and community pressure may drive hasty decisions, and where the economic consequences of divorce for women may be severe, judicial oversight provides a safeguard that purely private mechanisms do not. The court process should be accessible in terms of cost and geography: family courts with specifically trained judges should be available in all districts, legal aid should be available to parties who cannot afford representation, and the process should be designed to be completed within a reasonable time frame rather than dragging on for years as the existing family court process frequently does.

On the economic consequences of divorce, the Code must establish a comprehensive framework for maintenance, property division, and the rights of children. Maintenance after divorce should be distinguished from maintenance during marriage, which the next chapter addresses. The

divorced wife should be entitled to maintenance from the husband for a specified period following the divorce, with the amount determined by the court having regard to the respective means and needs of the parties and to the wife's future earning capacity. The Code should also establish a framework for division of marital property: property acquired jointly during the marriage should be subject to equal division, recognizing the economic contribution that unpaid domestic labor makes to the household, even where that contribution is not reflected in formal ownership.

The Code's provisions on children of divorced parents must establish clear principles of custody, access, and maintenance. The welfare of the child should be the paramount consideration in all custody determinations: the court should determine custody arrangements based on what is in the best interest of the child, not on the basis of any prior presumption about which parent is the more appropriate custodian. Both parents should have a legal obligation of maintenance toward children of the marriage, regardless of which parent has physical custody.

26.4 Divorce and the Remarriage Rights of Hindu Women

The Hindu Widows' Remarriage Act of 1856, one of the most celebrated legislative achievements of the colonial reform period, established the legal right of Hindu widows to remarry. This Act remains in force in Bangladesh and means that a Hindu woman whose husband has died is legally free to remarry. The proposed Code's introduction of divorce creates a corresponding right of remarriage for divorced Hindu women: a woman who has obtained a divorce under the Code should be legally free to remarry after the divorce has been finalized and any applicable waiting period has elapsed.

The traditional objection to the remarriage of divorced women, which was even stronger than the objection to widows' remarriage because divorce implies the survival of the former husband, is even less defensible in constitutional terms than the objection to widows' remarriage was in 1856. A woman who has obtained a legal divorce is no longer married; the principle that she should be treated as permanently bound to a dissolved marriage is inconsistent with the most basic principles of legal personhood and autonomy.

The Code should establish a waiting period for remarriage after divorce, primarily for the practical purpose of resolving questions about the paternity of children and the finality of the dissolution. This waiting period should be of reasonable length, the exact period to be determined by the Law Commission in consultation with the community, and should apply equally to both parties to the divorce.

CHAPTER TWENTY-SEVEN: THE PROPOSED REFORM OF HINDU INHERITANCE AND SUCCESSION LAW: TRANSFORMING THE DAYABHAGA SYSTEM

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27.1 The Architecture of Discrimination in the Existing System

The law of inheritance and succession is the domain in which the discrimination embedded in the existing Dayabhaga law is most extensive, most economically consequential, and most thoroughly analyzed. It is also the domain in which the proposed Code must make its most ambitious and most technically challenging changes. The existing Dayabhaga inheritance rules are not simply a matter of women receiving less than men; they are a comprehensive system of differential treatment that operates at multiple levels simultaneously and that has been refined through colonial judicial interpretation into a body of law of extraordinary complexity.

As the surveys of the existing law presented throughout this treatise have established, the basic structure of discrimination in the existing Dayabhaga inheritance rules can be summarized as follows. First, daughters are excluded from the inheritance of their father's property so long as any male relative of the categories prioritized by the Dayabhaga rules (son, grandson, great-grandson, brother, and numerous others) is alive. A daughter can inherit from her father only in the highly unusual circumstances where he has left none of these preferred relatives. Second, even where a woman does inherit property, her right is generally a limited right: she holds the property for her lifetime, cannot alienate it (except in cases of legal necessity or for charitable and religious purposes), and must leave it to the reversionary heirs designated by the Dayabhaga rules rather than being free to dispose of it as she chooses. Third, unchastity remains a ground for excluding a woman from inheritance under the Dayabhaga rules as received in Bangladesh, a provision that has no parallel in the modern law of any other jurisdiction and that has been specifically abolished in India by the Hindu Succession Act of 1956. Fourth, the Stridhana rules, which govern women's property acquired in various ways, create a complex hierarchy of women's property rights that varies depending on how the property was acquired, creating enormous practical uncertainty and scope for manipulation.

The proposed Code must address all four of these dimensions of discrimination simultaneously and comprehensively. Addressing only one or two while leaving the others in place would leave the system of gender inequality substantially intact: the value of giving daughters inheritance rights is significantly reduced if those rights are limited rights rather than absolute ownership; the value of eliminating the limited estate principle is significantly reduced if daughters can still be excluded by the presence of male relatives.

27.2 The Indian Model and Its Adaptation to the Dayabhaga Context

The Indian Hindu Succession Act of 1956, as amended by the Hindu Succession (Amendment) Act of 2005, provides the most important comparative model for the reform of Hindu inheritance law in Bangladesh. But the adaptation of this model to the Dayabhaga context in Bangladesh requires careful attention to the fundamental differences between the Mitakshara system that the Indian legislation addresses and the Dayabhaga system that governs in Bangladesh.

The most fundamental difference between the Mitakshara and Dayabhaga systems, from the perspective of inheritance reform, is the treatment of coparcenary property. Under the Mitakshara system, property held by a joint Hindu family is coparcenary property in which each

male member of the family has a birthright interest: he is a coparcener by the mere fact of being born into the family. The 2005 amendment to the Indian Hindu Succession Act extended coparcenary status to daughters, making them coparceners by birth with the same rights as sons. This was a major step toward gender equality in inheritance law, and it was confirmed and given retroactive effect by the Supreme Court of India's landmark judgment in Vineeta Sharma versus Rakesh Sharma in 2020, which established that daughters' coparcenary rights flow from birth itself and are not conditional on the father being alive at the time of the amendment.

The Dayabhaga system, by contrast, does not recognize a birthright to coparcenary property in the Mitakshara sense. Under the Dayabhaga rules, property in a joint Hindu family is held in quasi-severalty rather than in undivided coparcenary ownership: each member of the joint family has a definite share that is ascertainable and alienable without the consent of the other members. There is no concept of coparcenary by birth in the Mitakshara sense; the joint family property under Dayabhaga is more like concurrent ownership than coparcenary.

This difference does not reduce the need for reform; it changes the technical form that reform should take. Under the Dayabhaga system, the relevant reform question is not whether daughters should be recognized as coparceners by birth but whether daughters should have equal shares in the intestate succession to their father's property on the same basis as sons, and whether women who inherit property should hold it absolutely rather than as a limited estate.

The answer to both questions must be yes, and the proposed Code should provide accordingly. The Code should establish that on the intestate death of a Hindu male, his property devolves equally on his wife and his children (including daughters on the same basis as sons), with the shares of children being equal regardless of sex. This provision directly addresses the first dimension of discrimination identified in the previous section: it eliminates the exclusion of daughters from inheritance in favor of male relatives and establishes the principle of equal intestate shares for all children regardless of sex.

The Code should further establish that all property inherited under the Code by a female heir shall be held by her as her absolute property, with the same rights to alienate, mortgage, gift, and bequeath as any male heir would have. This provision directly addresses the second dimension of discrimination: it abolishes the limited estate principle and ensures that inherited property is absolute ownership rather than a life interest subject to reversion.

27.3 The Proposed Order of Succession: A Detailed Framework

The proposed Code's framework for intestate succession should be built on the principle of equal treatment of all children, regardless of sex, as the first-order heirs. This represents a fundamental departure from the classical Dayabhaga order of heirs, which privileges male relatives at multiple levels. The justification for this departure is both constitutional (Article 28's prohibition of discrimination on grounds of sex) and Dharmic (the Shishubar Dhali judgment's demonstration that the egalitarian principle is embedded in the Dayabhaga texts themselves when read without the patriarchal distortions imposed by colonial interpretation).

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The proposed order of succession for the intestate estate of a Hindu male should be as follows. In the first class of heirs, taking simultaneously and in equal shares: the sons, daughters, and widow of the deceased, and the children of any predeceased son or daughter (per stirpes). In the second class of heirs, taking only if there are no first-class heirs: the father and mother of the deceased, and the siblings and their descendants. In the third class of heirs: more remote relatives in an order determined by the degree of relationship to the deceased. In the absence of any heir in the three classes: the property should escheat to the government to be administered for the benefit of the Hindu community or for general charitable purposes at the government's discretion.

For the intestate estate of a Hindu female, the proposed order of succession should similarly place her children and husband in the first class of heirs, taking in equal shares. In the absence of children and husband, the property should pass to her parents and siblings. The Stridhana rules, which create special categories of women's property with different devolution rules, should be simplified: the Code should abolish the distinction between Sudayika and non-Sudayika Stridhana and establish a single rule that all property held by a Hindu woman as her absolute property shall devolve on her intestate death according to the order of succession established by the Code.

27.4 The Abolition of the Unchastity Exclusion

Among the most urgent specific reforms that the Code must accomplish is the abolition of the rule that permits the exclusion of a woman from inheritance on grounds of unchastity. This rule, which was specifically abolished in India by the Hindu Succession Act 1956 and has no equivalent in any other system of law operating in Bangladesh, is an extraordinary exercise in patriarchal control: it makes a woman's property rights contingent on her sexual behavior as assessed by the male relatives who would benefit from her exclusion.

The unchastity exclusion operates in the existing Dayabhaga law as a disqualification applicable to all five categories of female heirs: the widow, the daughter, the mother, the father's mother, and the father's father's mother can all be excluded from inheritance if they are found to be unchaste. The definition of unchastity is itself a product of patriarchal construction: it focuses primarily on sexual relations outside marriage and is defined in ways that make it much easier to apply to women than to men, for whom no equivalent disqualification exists.

The Code should abolish the unchastity exclusion entirely and should state explicitly that unchastity is not a ground for disqualification from inheritance under any provision of the Code. This explicit statement is necessary rather than merely implicit in the general principle of equal treatment, because the unchastity exclusion has been so deeply embedded in the judicial interpretation of Dayabhaga law that without an explicit abolition, courts might continue to apply it.

27.5 Testamentary Succession and Its Reform

Testamentary succession, the right to dispose of property by will, is an area in which the existing law in Bangladesh also contains discriminatory provisions that require reform. Under the current

position, a Hindu male has an unrestricted right to make a will disposing of his self-acquired property. A Hindu woman's power to make a will is, however, subject to limitations deriving from the limited estate principle: since she holds inherited property as a limited estate rather than as absolute ownership, she has no power to bequeath it by will. She can bequeath her Stridhan, but the scope of her Stridhan is, as the previous sections have shown, much narrower than the scope of a man's absolute property.

The Code's reform of the limited estate principle automatically addresses this dimension of discrimination: if women hold inherited property as absolute ownership rather than as a limited estate, they automatically acquire the power to bequeath it by will. But the Code should also include an explicit provision stating that all persons governed by the Code have equal powers of testamentary disposition over all property they hold as absolute owners, regardless of sex.

The Code should also establish minimum protections against disinheritance. While the principle of testamentary freedom should be preserved, the Code should include provisions similar to the forced heirship rules in many civil law systems that prevent a testator from completely disinheriting a spouse or child without adequate provision. These provisions protect against the use of testamentary freedom to circumvent the equal inheritance principles of the intestate succession rules: without such provisions, a Hindu man who wishes to prevent his daughter from inheriting equal shares could simply make a will leaving everything to his sons. The Code's forced heirship provisions should establish that a spouse and each child are entitled to a minimum share of the deceased's estate regardless of the terms of any will, with the minimum share calculated by reference to the share they would have received under the intestate succession rules.

27.6 The Vineeta Sharma Principle and Its Application to Bangladesh

The Indian Supreme Court's judgment in Vineeta Sharma versus Rakesh Sharma in 2020 established a principle of extraordinary importance for inheritance law reform: that daughters' equal inheritance rights flow from birth itself and are not contingent on any subsequent event, including the father's death or the daughter's marital status. This principle, which resolved a significant confusion in the post-2005 Indian law and established with clarity the retroactive character of daughters' inheritance rights, deserves specific attention in the Bangladeshi context.

The Vineeta Sharma principle, applied to the Bangladeshi context, suggests that the Code's reform of daughters' inheritance rights should be designed to have the broadest possible temporal scope. If the principle is that daughters have equal inheritance rights by virtue of their birth, then the Code should provide that daughters who were born before the Code's commencement have equal inheritance rights to the estates of fathers who have not yet died. This is not full retroactivity, which would unsettle completed inheritance transactions; it is what the Indian Supreme Court called retroactivity as distinct from retrospectivity, applying the new rights to ongoing situations rather than reopening completed transactions.

The Code should therefore include a provision establishing that the equal inheritance rights of daughters apply in all cases where the relevant estate has not been distributed in a completed

partition or distribution before the Code's commencement. This provision should be interpreted liberally by courts in accordance with the Vineeta Sharma principle: a mere informal family arrangement that purports to partition without formal documentation should not be sufficient to take a case outside the Code's application, because the family arrangement mechanism has historically been used to exclude women from inheritance before the law can apply.

CHAPTER TWENTY-EIGHT: THE PROPOSED REFORM OF HINDU ADOPTION LAW IN BANGLADESH

28.1 The Existing Law and Its Discriminatory Features

The law of adoption in Bangladesh for Hindu families is governed by the classical Dayabhaga texts, primarily the Dattaka Chandrika (the treatise on adoption attributed to Kuvera, which has paramount authority in Bengal on adoption matters) and the Dattaka Mimamsa of Nanda Pandit. The adoption rules derived from these texts, as received and interpreted by the colonial courts and subsequently applied in Bangladesh, contain significant discriminatory features that the proposed Code must address.

Under the existing law, adoption of a son (Dattaka) is the primary form of adoption recognized. The primary motivation for adoption, as reflected in the classical texts, is religious: the purpose of adopting a son is to ensure that the adopter will have a male heir capable of performing the post-death religious rites (shraddha) that are essential for the spiritual welfare of the deceased. This religious motivation shapes the rules of adoption in ways that create gender discrimination at multiple points.

First, only males can be adopted under the classical rules. The adoption of daughters is not recognized under the Dayabhaga adoption law, because daughters do not perform the relevant religious rites and therefore cannot serve the religious purpose that adoption is designed to accomplish. This creates an immediate and obvious discrimination: a Hindu couple without children who wish to adopt a daughter cannot do so under the existing law, despite the fact that there are many girls in Bangladesh who need families and many families who would willingly care for them.

Second, the rules governing who may adopt are asymmetric between men and women. A Hindu man has an absolute right to adopt without his wife's consent, though the wife's consent is conventional and generally obtained. A Hindu woman can adopt only with the consent of her husband. A widow may adopt, but only if her husband has expressly authorized her to do so before his death, or if the court permits it in exceptional circumstances. A single woman who has never married cannot adopt at all under the classical rules.

Third, the rules governing who may be adopted are themselves discriminatory in ways that go beyond the male-only requirement. The rules specify detailed conditions about the relationship between the adoptive parent and the person to be adopted, including requirements related to the

caste status of both parties. While the caste requirements have been substantially relaxed by judicial interpretation, they have not been entirely eliminated, and in some cases they continue to create barriers to adoption that serve no legitimate purpose in a modern legal framework.

28.2 The Comparative Reference: Indian Law and Its Lessons

The Indian Hindu Adoptions and Maintenance Act of 1956 reformed Hindu adoption law in India in ways that directly address the principal discriminatory features of the classical rules. The 1956 Act permitted the adoption of daughters as well as sons; established equal rights of adoption for Hindu women in certain circumstances; relaxed the caste requirements for adoption; and established a comprehensive framework for the legal consequences of adoption, including the severance of the adoptee's legal relationship with the birth family and the creation of a new legal relationship with the adoptive family.

The 1956 Act's reform of adoption law in India has been broadly successful. The adoption of daughters has become increasingly common; the equal rights of women to adopt (within the Act's framework, which still requires the husband's consent for a married woman) have been exercised; and the clarity of the legal framework for the consequences of adoption has reduced litigation and uncertainty. The Indian experience provides strong evidence that the reform of Hindu adoption law is workable and beneficial.

For Bangladesh, the adaptation of the Indian model must take account of two specific features of the Bangladeshi context. The first is the situation of orphaned and abandoned children in Bangladesh, many of whom are girls, and the potential for reformed adoption law to provide families for children who need them. The second is the specific situation of Hindu families in Bangladesh who may wish to adopt children from non-Hindu families or to arrange adoptions across religious lines. The Code must address the intersection of adoption law with the religious identity provisions applicable to the different communities.

28.3 Proposed Provisions on Adoption

The proposed Code's adoption provisions should accomplish the following principal reforms. First, the Code should permit the adoption of both sons and daughters, eliminating the male-only restriction of the classical law. The religious motivation for adoption, while deserving of respect as an aspect of Hindu cultural practice, cannot serve as a justification for legal discrimination between male and female children in matters of adoption. Second, the Code should establish equal rights of adoption for Hindu men and women. A Hindu woman, whether married, widowed, or single, should have the same right to adopt as a Hindu man, without requiring the consent of a husband or any other male authority. A married woman should be required to have the consent of her husband for adoption, in the same way and to the same extent that a married man is required to have the consent of his wife, on a principle of mutual consent between spouses rather than a one-way requirement of male authority.

Third, the Code should establish the conditions for a valid adoption. These should include: the adoptive parent must be a Hindu at the time of adoption; the person to be adopted must be Hindu

at the time of adoption or capable of being brought up as Hindu; the person to be adopted must be below the age of fifteen years unless custom or usage applicable to the parties permits adoption of an older person; there must be no existing child of the sex of the child to be adopted unless custom or usage otherwise permits; and the adoption must be completed by the giving and taking ceremony or its customary equivalent.

Fourth, the Code should establish that a validly completed adoption severs the adoptee's legal connection with the birth family for all purposes and creates a new legal connection with the adoptive family for all purposes, including inheritance, maintenance, and religious duties. This provision ensures that the consequences of adoption are clear and comprehensive, reducing the litigation that has historically surrounded questions about the scope of the adoptee's legal relationship with both birth and adoptive families.

Fifth, the Code should address the consent requirements for adoption. Where the child to be adopted is being given up by a parent, the consent of both parents should be required, not merely the consent of the father. Where the child is an orphan or where parental consent cannot be obtained for legitimate reasons, the court should be empowered to authorize the adoption without parental consent.

28.4 Adoption and the Welfare of the Child

A significant gap in the existing Hindu adoption law, which the proposed Code must address, is the absence of any explicit principle making the welfare of the child a paramount consideration in adoption decisions. The classical law conceptualizes adoption primarily from the perspective of the adoptive parent's religious needs and social interests; the adoptee's own interests are secondary considerations at best.

The proposed Code should establish explicitly that the welfare of the child is the paramount consideration in all adoption decisions, and that courts exercising their jurisdiction in adoption matters must treat this principle as overriding all other considerations, including the religious motivations of the adoptive parents. This principle aligns the Code with the international standards established by the Convention on the Rights of the Child, to which Bangladesh is a party, and with the modern understanding of adoption as an institution designed primarily for the benefit of children rather than for the religious or social purposes of the adoptive family.

CHAPTER TWENTY-NINE: THE PROPOSED REFORM OF HINDU MAINTENANCE LAW IN BANGLADESH

29.1 The Existing Maintenance Framework and Its Inadequacies

The law of maintenance for Hindu families in Bangladesh is governed primarily by the Hindu Married Women's Right to Separate Residence and Maintenance Act 1946, supplemented by the provisions of the Family Courts Ordinance 1985 which established a unified family court system

for all communities. The 1946 Act provides a right of separate residence and maintenance to a Hindu married woman on specific grounds: the husband's suffering from a loathsome disease not contracted from the wife, the husband's cruelty, the husband's desertion, the husband's taking of a second wife or cohabitation with a mistress, the husband's conversion to another religion, and any other cause found sufficient by the court.

The 1946 Act represents a genuine reform achievement for its time: it was one of the few pieces of legislation enacted before independence that extended substantive protections specifically to Hindu married women, and it remains the primary legal mechanism by which Hindu women in Bangladesh can seek maintenance. But its inadequacies as a comprehensive framework for Hindu maintenance law in the contemporary constitutional context are substantial.

The first inadequacy is that the Act provides for separation and maintenance but not for divorce. A woman who has obtained maintenance under the Act remains legally married to the husband from whom she is separated. This means that her maintenance rights are contingent on her continued marital status and on her continued compliance with the Act's conditions: she loses her right to maintenance if she converts to another religion or fails to comply with a court order for restitution of conjugal rights. The dependency of maintenance rights on the continuation of a legal marital relationship that may have completely broken down in practice is an anomaly that the introduction of divorce in the Code will address, but the maintenance provisions of the Code must be carefully designed to work together with the divorce provisions.

The second inadequacy is the limitation of the Act to wives. The Act provides for the maintenance of a wife separated from her husband; it does not address the maintenance of children, the maintenance of elderly parents, or the maintenance of other dependent family members. These other categories of maintenance are addressed, in the existing law, primarily by the general principles of Hindu customary law, which establish that a Hindu male head of the family has an obligation to maintain his dependents, but which are not codified in any statutory form and are therefore subject to the same uncertainties of interpretation and proof that affect all uncodified Hindu law.

The third inadequacy is the enforcement mechanism. The Family Courts Ordinance 1985 established family courts with jurisdiction to hear maintenance cases, and in principle this provides an accessible forum for the enforcement of maintenance rights. In practice, however, the enforcement of maintenance orders against Hindu men has been persistently problematic. The documentation requirements for proving the marriage, the assets of the respondent, and the needs of the applicant are often beyond the practical capacity of rural Hindu women without legal assistance. And even where orders are obtained, execution against the assets of a defendant who chooses not to comply requires further legal proceedings that add cost and delay.

29.2 The Maintenance of Wives: Proposed Provisions

The proposed Code's provisions on the maintenance of wives should address three distinct situations: maintenance during marriage where the spouses are living separately, maintenance pending divorce proceedings, and maintenance after divorce. These three situations have

different characteristics and require somewhat different legal treatment, though they share the underlying principle that a wife who is unable to maintain herself has a legal claim on her husband's resources.

On maintenance during marriage, the Code should repeal and replace the 1946 Act with a more comprehensive and accessible provision. The obligation of maintenance should be stated as a general duty of a Hindu husband to maintain his wife if she is unable to maintain herself, without requiring the wife to establish one of the specific grounds listed in the 1946 Act. The quantum of maintenance should be determined by the court having regard to the standard of living enjoyed during the marriage, the respective means and incomes of the parties, the needs of the parties, and any other relevant factor. This is a more flexible and potentially more generous framework than the 1946 Act, which establishes only a right to "suitable" maintenance without specific guidelines for its assessment.

On maintenance pending divorce, the Code should provide for interim maintenance during the period from the filing of a divorce petition to its final determination. This provision is essential because divorce proceedings can take considerable time, and a wife without income who has left the matrimonial home to pursue divorce proceedings faces destitution during the proceedings if no interim provision is made.

On maintenance after divorce, the Code should establish a right to post-divorce maintenance for a period to be determined by the court, having regard to the factors listed above and specifically to the wife's capacity to earn her own living. The purpose of post-divorce maintenance is not to provide permanent support for a former wife who is fully capable of self-support but to provide a transitional mechanism during the period when a wife is re-establishing her economic independence after the dissolution of the marriage. Where the wife is unable, by reason of age, disability, or the demands of childcare, to become economically self-sufficient within a reasonable period, the court should have power to award maintenance for an extended period or indefinitely.

29.3 The Maintenance of Children

The proposed Code's provisions on the maintenance of children of Hindu marriages should establish a clear and enforceable obligation of maintenance by both parents, regardless of their marital status or the custody arrangements for the children. The principle that both parents share responsibility for the maintenance of their children is both constitutionally grounded and consistent with the most sophisticated contemporary understanding of parental responsibility.

The Code should establish that both parents of a Hindu child have an equal legal obligation to contribute to the maintenance of the child, with the contribution of each parent to be assessed by the court in proportion to their respective incomes and resources. This provision replaces the existing customary rule, which places the primary maintenance obligation on the father, with a gender-equal framework that recognizes both parents' obligations.

The Code should also establish that children have independent rights of maintenance against both parents that are not dependent on the continuation of the parents' marriage. A child has a right to maintenance from both parents regardless of whether the parents are married, separated, divorced, or never married. The child's right persists until the child reaches the age of majority or the completion of full-time education, whichever is later.

29.4 The Maintenance of Elderly and Dependent Family Members

The obligation of maintenance toward elderly parents and other dependent family members is recognized in classical Hindu law and has deep Dharmic foundations: the duty of filial piety toward parents is one of the most fundamental obligations recognized across all Hindu legal texts, and the maintenance of dependent family members reflects the Dharmic understanding of the family as a unit of mutual obligation and solidarity.

The proposed Code should codify this obligation in terms that are both faithful to the tradition and consistent with contemporary constitutional requirements. The Code should establish that Hindu children have a legal obligation to maintain their parents if the parents are unable to maintain themselves, with the obligation distributed among the children in proportion to their respective resources. This obligation should apply equally to daughters as to sons, eliminating the existing customary position under which the maintenance obligation falls primarily on sons. The Code should also address the maintenance of other dependent family members, such as siblings with disabilities or elderly relatives without other means of support, while being careful to define the scope of the obligation with sufficient clarity to be enforceable.

CHAPTER THIRTY: TRANSITIONAL PROVISIONS, INSTITUTIONAL INFRASTRUCTURE, AND THE CONDITIONS FOR EFFECTIVE IMPLEMENTATION

30.1 The Critical Importance of Transitional Provisions

Any comprehensive reform of personal law of the kind proposed in this Part must include carefully designed transitional provisions that manage the shift from the old regime to the new one in ways that are fair to all parties while ensuring that the new regime is effectively established as quickly as possible. The design of transitional provisions is one of the technically most demanding aspects of legislative drafting, and it is an area in which inadequate attention has sometimes produced results that undermine the reform's effectiveness.

The proposed Code's transitional provisions should address three categories of situation. The first category is ongoing legal relationships: marriages contracted before the Code's commencement, adoption arrangements made before the Code, and inheritance arrangements in estates that have not yet been distributed. The second category is pending legal proceedings: divorce petitions, maintenance applications, and inheritance disputes that are before the courts when the Code comes into force. The third category is completed legal transactions: inheritance distributions

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completed before the Code, adoptions completed before the Code, and maintenance orders made under the previous law.

For ongoing legal relationships, the Code should generally apply with effect from its commencement date, subject to such saving provisions as fairness requires. This means that marriages contracted under the old law will be governed by the Code from its commencement, that women who have been living in marriages will immediately acquire the rights the Code provides, and that inheritance claims arising from deaths that occur after the Code's commencement will be governed by the Code. The Vineeta Sharma principle, discussed in Chapter Twenty-Seven, suggests that for inheritance purposes, the Code should apply to all estates that have not been distributed in a legally recognized partition before the Code's commencement.

For pending legal proceedings, the Code should provide that proceedings filed before the Code's commencement continue under the law as it stood at the time of filing, unless the applicant elects to have the Code apply, in which case the Code applies from the date of election. This provision respects the legitimate expectations of parties who have organized their proceedings under the old law while giving applicants who would benefit from the Code's provisions the option to take advantage of them.

For completed legal transactions, the Code should provide that they are not affected: a distribution of inheritance that was completed before the Code's commencement remains valid, and a woman who has received a limited estate in inheritance under the old law does not automatically acquire absolute ownership of that property by virtue of the Code. This saving provision protects the security of completed transactions and prevents the retrospective invalidation of settled legal arrangements. However, the Code should provide that the limited estate holder's rights over the property are converted to absolute ownership from the date of the Code's commencement: her right to hold the property for her lifetime and to manage it for her benefit remains, but the reversion in favor of reversionary heirs is extinguished, and she may now alienate the property as she chooses.

30.2 The Family Courts System and Its Reform

The effective implementation of the proposed Code depends critically on the availability of accessible, affordable, and expert judicial institutions for hearing the cases that will arise under it. The Family Courts Ordinance 1985 established a network of family courts in Bangladesh with jurisdiction over all family law matters, including Hindu personal law matters. These courts have provided a forum that is, in principle, accessible and specialized. But the reality of the family courts' operation has often fallen significantly short of their potential, and the Code's implementation will require specific attention to improving the courts' capacity and accessibility.

The family courts' most significant practical problem is their geographical distribution: courts are available at the district level, but for rural litigants, particularly women without independent access to transportation or resources, even a district court may be effectively inaccessible. The Code should include a provision requiring the government to establish accessible family law

services at the upazila level, bringing the dispute resolution forum closer to the communities that need it. These sub-district services need not be full courts; they could be mediation and legal advice services that resolve straightforward cases without the need for full judicial proceedings, referring only genuinely contested cases to the district-level family court.

The Code should also include provisions specifically addressing the training of judges and magistrates in Hindu personal law. The current situation, in which most judges who hear Hindu personal law cases have received no specific training in the Dayabhaga tradition or in the particular vulnerabilities of Hindu women under the existing law, is inadequate. Judicial training programs covering the substantive provisions of the Code, the interpretive principles established by the Code, and the social context of Hindu personal law cases should be developed and made mandatory for all judges and magistrates who hear such cases.

30.3 Legal Aid and Legal Literacy

The Code's provisions, however well-drafted and comprehensive, will be effectively inaccessible to the majority of Hindu women who stand to benefit from them unless substantive legal aid and legal literacy programs are established and maintained. The experience of legal aid provision in Bangladesh has demonstrated both the importance of legal aid and the chronic underfunding that makes it inadequate to meet the need. The Code should include a specific mandate for the government to ensure adequate legal aid for Hindu personal law cases, with enforcement mechanisms that give legal aid organizations the standing to enforce this mandate.

Legal literacy programs, specifically designed to inform the Hindu community about the provisions of the Code and the rights it establishes, are equally important. These programs should be conducted in Bangla, should be designed for communities with low literacy, should make specific use of community-based networks such as Hindu temples and community organizations as channels for information dissemination, and should specifically target women as the primary beneficiaries of the Code's reforms.

The Code should also include provisions mandating the training of local-level para-legal workers, particularly women, who can provide basic advice and assistance to Hindu women seeking to exercise their rights under the Code. Experience from other South Asian contexts, including the Indian experience with the operation of village-level legal aid workers, demonstrates that para-legal support at the community level can significantly increase women's ability to access their legal rights in practice.

30.4 Documentation and Proof: Addressing the Evidence Problem

One of the most practically significant obstacles to the effective exercise of rights under Hindu personal law in Bangladesh is the evidence problem: the difficulty of proving the facts on which legal rights depend in the absence of reliable documentation. The marriage certificate that would prove a Hindu woman's marital status may not exist. The property documents that would establish her husband's assets for maintenance purposes may be held by male relatives who have no incentive to produce them. The birth certificates of children may not have been registered.

The traditional documents that established the terms of an ancestral property arrangement may have been lost, hidden, or never properly created.

The Code must address the evidence problem in at least two ways. First, by establishing administrative systems that create the documentation that the evidence problem reflects the absence of: compulsory marriage registration, compulsory birth registration, and accessible land registry systems that enable property ownership to be established and proven. Second, by establishing rules of evidence that accommodate the practical reality of documentary gaps: provisions that shift the burden of proof in appropriate cases, that require adverse inferences to be drawn from the failure of parties with control over documents to produce them, and that allow courts to draw on circumstantial evidence and testimony where documentary evidence is unavailable.

The Code should specifically provide that in any case involving Hindu personal law rights where the relevant facts are disputed and documentary evidence is limited, the court shall apply a rebuttable presumption in favor of the claimant if the overall balance of the evidence supports the claim. This provision is particularly important in maintenance cases, where a wife seeking maintenance often has no documentary evidence of her husband's income and must rely on the court's willingness to assess his means from circumstantial evidence and his own testimony.

30.5 The Monitoring and Evaluation Framework

The proposed Code should include explicit provisions for the monitoring and evaluation of its implementation. The experience of law reform across multiple jurisdictions demonstrates that reform legislation without monitoring and evaluation mechanisms tends to remain a paper reform: its provisions are formally enacted but their practical implementation is not tracked, the problems that arise in implementation are not systematically identified and addressed, and the gap between the law on paper and the law in practice is never reduced.

The Code should establish a monitoring mechanism with the following elements: an annual reporting requirement on the number of cases filed under each provision of the Code, the outcomes of those cases, and the characteristics of the parties; a periodic review, at intervals of not more than five years, of the Code's provisions with a view to identifying provisions that are not working as intended and recommending amendments; a requirement for the government to report to Parliament on the implementation of the Code and on the steps it is taking to address any identified gaps; and a role for civil society organizations and academic researchers in the monitoring process, ensuring that the formal institutional monitoring is supplemented by independent scrutiny.

The monitoring framework should also include specific gender-disaggregated indicators that allow the impact of the Code's provisions on women's legal situation to be tracked over time. These indicators should include: the proportion of Hindu women who have obtained maintenance orders under the Code; the proportion of inheritance distributions in which daughters have received equal shares; the registration rates for Hindu marriages; the number of divorce petitions filed and determined; and measures of Hindu women's property ownership,

access to legal aid, and legal awareness. These indicators will provide the evidential basis for the ongoing evaluation of whether the Code is achieving its constitutional and human rights purposes.

30.6 The National Hindu Law Commission: A Proposed Institutional Innovation

This treatise proposes, as a specific institutional innovation to support the Code's implementation, the establishment of a National Hindu Law Commission: a permanent body charged with monitoring the implementation of the Code, providing guidance on its interpretation, making recommendations for its amendment, and promoting legal literacy and access to justice within the Hindu community.

The National Hindu Law Commission should be established by the Code itself and should be composed of a combination of legal experts, community representatives (including substantive representation from Hindu women's organizations), human rights advocates, and government representatives. It should be chaired by a retired judge of the High Court Division or above and should be provided with adequate resources to conduct its mandate effectively.

The Commission's functions should include: receiving and investigating complaints about the non-implementation of the Code's provisions; issuing guidelines on the interpretation of the Code for the benefit of courts, lawyers, and litigants; conducting and commissioning research on the operation and impact of the Code; liaising with international human rights bodies on the Code's implementation; and providing an annual report to Parliament on the state of Hindu personal law implementation in Bangladesh.

The proposal for a National Hindu Law Commission is not without precedent: the Indian Law Commission has historically played an important role in monitoring and recommending reform of personal law provisions in India, and several other countries have established permanent bodies for the monitoring of minority community legal issues. What distinguishes the proposed Commission is its specific mandate in relation to Hindu personal law in Bangladesh, its composition (which ensures meaningful representation of the Hindu community, including women), and its explicit human rights monitoring function.

CONCLUSION TO PART TWELVE

Part Twelve has presented, across seven chapters, the most detailed prescription for comprehensive Hindu personal law reform in Bangladesh available in the academic literature. The prescription is comprehensive in its scope: it addresses every principal domain of Hindu personal law, from the conditions of a valid marriage through the introduction of divorce, the reform of inheritance and succession, the reform of adoption law, the reform of maintenance, and the institutional and transitional provisions necessary for effective implementation.

Throughout, the prescription has been grounded in three simultaneous normative orders: the constitutional framework of the July Charter and Bangladesh's fundamental rights provisions; the international human rights standards of CEDAW, the ICCPR, and related instruments; and the internal logic of the Dayabhaga jurisprudential tradition as it is revealed when freed from colonial distortion and read in light of the tradition's own Dharmic principles. The compatibility of these three normative orders, demonstrated throughout this Part, is one of the most important conclusions of the entire treatise: the reform that constitutional law requires, that international human rights law mandates, and that the Dayabhaga tradition's own best understanding supports is the same reform. There is no genuine conflict between the constitutional, international, and traditional grounds for the Code's provisions. The traditional arguments against reform are arguments based on a colonial distortion of the tradition, not on the tradition itself.

The specific legislative prescriptions offered in this Part are offered as an intellectual framework and starting point for the legislative drafting process, not as a definitive legislative text. The specific provisions will require technical legal refinement, community consultation, parliamentary deliberation, and ongoing adaptation in the light of implementation experience. But the framework is complete enough to provide the new parliament with a solid foundation for the comprehensive legislative action that the constitutional mandate of the July Charter requires.

Part Thirteen of this treatise will examine the specific constitutional litigation strategy that can be pursued in parallel with the legislative reform effort, including the specific cases that are most likely to produce judicial decisions requiring legislative action and the specific constitutional arguments that are most likely to succeed before the Bangladesh Supreme Court under the new constitutional framework established by the July Charter.

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Part Twelve of this treatise concludes here. Part Thirteen will examine the constitutional litigation strategy for Hindu personal law reform in Bangladesh, analyzing the specific cases and constitutional arguments most likely to produce judicial mandates for comprehensive reform under the new constitutional framework of the July Charter.

PART THIRTEEN

The Architecture of Constitutional Litigation: Strategic Adjudication, Fundamental Rights Arguments, and the Judicial Path to Hindu Personal Law Reform in the Post-Charter Constitutional Order of Bangladesh

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FOREWORD TO PART THIRTEEN

The previous twelve parts of this treatise have constructed an elaborate intellectual scaffolding for the reform of Hindu personal law in Bangladesh. Part One established the philosophical and

historical foundations, tracing the ancient jurisprudence of Dharma through the colonial encounter and into the present crisis of legal stagnation. Parts Two through Five examined in granular detail the specific areas of substantive law, including the Dayabhaga rules of inheritance, the institution of Hindu marriage as a sacrament without exit, the adoption law and its peculiarities, and the maintenance provisions that leave widows and abandoned wives in conditions of legal helplessness. Parts Six through Eight situated all of this within the frameworks of comparative law, international human rights obligations, and the constitutional architecture of Bangladesh itself. Parts Nine through Eleven analyzed the politics of reform, the community dynamics that complicate legislative action, and the academic and civil society voices that have built the reform consensus. Part Twelve offered the most comprehensive prescriptive framework for a proposed Hindu Personal Law Code yet assembled in a single academic text, addressing every major domain of the law and providing both the philosophical justification and the practical legislative blueprint for comprehensive reform.

Part Thirteen turns to a different but equally essential dimension of the reform project: the strategy of constitutional litigation. Legislative reform and judicial reform are not alternatives to each other. They are complementary pathways, each capable of producing results that the other cannot, and together capable of producing results that neither can achieve alone. The legislative pathway offers the possibility of comprehensive, systematic, democratically legitimate reform that can reshape the entire field of Hindu personal law at once. The judicial pathway offers the possibility of targeted, principled, rights-grounded interventions that can invalidate specific rules, establish constitutional standards that constrain legislative inaction, and create the kind of precedent-based pressure that has historically been one of the most effective engines of law reform in South Asian constitutional systems.

The context for Part Thirteen is, moreover, dramatically transformed from that which governed earlier parts of this treatise. The constitutional referendum of February 12, 2026, the referendum that endorsed the July Charter and gave the incoming Bangladesh Nationalist Party government a mandate to implement its eighty-four reform proposals within a constitutionally prescribed period, has created a legal and political landscape in which arguments that might previously have seemed aspirational are now grounded in specific constitutional provisions whose implementation is legally mandated. The expansion of fundamental rights contemplated by the July Charter, the recognition of Bangladesh as a nation of multiple ethnicities, religions, languages, and cultures, and the explicit commitment to protections for minority communities all create new constitutional terrain on which the strategic litigant can operate with greater confidence and greater prospect of success than at any previous point in Bangladesh's post-independence history.

This Part proceeds through eight chapters. Chapter Thirty-One provides the theoretical foundations of constitutional litigation as a reform strategy, drawing on the comparative experience of India, South Africa, and Nepal and on the most recent developments in the theory of transformative constitutionalism and strategic public interest litigation. Chapter Thirty-Two examines in detail the constitutional provisions of Bangladesh, both pre-existing and as amended or proposed to be amended under the July Charter framework, that provide the strongest foundation for challenges to discriminatory Hindu personal law rules. Chapter Thirty-Three

analyzes the specific constitutional arguments that can be mounted against each principal domain of discriminatory Hindu personal law: inheritance, marriage, adoption, and maintenance. Chapter Thirty-Four examines the writ jurisdiction of the Bangladesh High Court Division and the procedure for public interest litigation, providing a practical guide to how strategic litigation in this field can be pursued. Chapter Thirty-Five surveys the most promising specific cases and situations that would provide the best vehicles for constitutional challenge. Chapter Thirty-Six addresses the anticipated judicial objections and counterarguments that strategic litigants must be prepared to meet, including arguments from religious freedom, legislative competence, and the limits of judicial review. Chapter Thirty-Seven examines the international human rights law dimension of constitutional litigation in this field, and how international norms can be integrated into domestic constitutional arguments. Chapter Thirty-Eight synthesizes the complete litigation strategy and situates it within the broader reform project, explaining how the judicial and legislative pathways interact and reinforce each other.

Throughout, this Part maintains the commitment to intellectual depth, philosophical rigor, and genuine engagement with the complexity of the issues that has characterized the entire treatise. Constitutional litigation in the field of personal law is one of the most challenging forms of constitutional advocacy. It confronts powerful arguments from religious freedom and community autonomy, it must navigate the particular sensitivity of judicial action in matters of personal law reform, and it must contend with a judiciary that, in Bangladesh as in many South Asian systems, has not always demonstrated the boldness that transformative constitutional jurisprudence demands. None of these challenges are insurmountable, but all of them require the kind of careful, sophisticated, philosophically grounded advocacy that this Part attempts to model.

CHAPTER THIRTY-ONE: THE THEORY AND PRACTICE OF CONSTITUTIONAL LITIGATION AS A REFORM STRATEGY

31.1 Strategic Litigation and the Theory of Legal Change

The idea that courts can be vehicles for fundamental social change is not self-evident. Indeed, within the dominant tradition of legal positivism, courts are conceived as institutions that interpret and apply the law as it exists, not as institutions that remake the law in accordance with principles that have not yet been legislatively enacted. For the classical positivist, from Bentham and Austin through Hart and Raz, the proper vehicle for law reform is the legislature, the institution that possesses democratic legitimacy and the mandate to translate popular will into binding legal rules. Courts, on this view, should confine themselves to applying the law that the legislature has made and should exercise a form of institutional restraint that prevents them from making policy judgments that are, properly speaking, the province of elected representatives.

This positivist framework captures something important about the appropriate division of institutional labor in a democratic state. But it is an incomplete account of what courts do and, more importantly, of what courts can legitimately do when legislatures fail in their fundamental obligations. When a legislature permits a body of law to remain in place that systematically

violates the constitutional rights of a section of the population, and when it has failed to remedy this situation over a period of decades during which the constitutional violation has been clear, the argument that judicial intervention would be undemocratic becomes progressively less persuasive. The constitutional rights of citizens are not gifts from the legislature. They are entitlements that the constitutional order itself confers, and that the judiciary is specifically charged with enforcing when other branches of government fail to do so.

This insight is at the heart of what constitutional theorists have come to call the countermajoritarian function of constitutional review. Alexander Bickel, writing in the American context in the 1960s, identified what he called the countermajoritarian difficulty: the problem that judicial review of legislation allows unelected judges to override decisions made by elected representatives, which seems in tension with the democratic principle. Bickel's formulation of the problem has been enormously influential, but his own response to it has been less widely followed: he believed that judicial review could be justified when it protected values that the democratic process had failed to honor, values that were embedded in the constitutional order and that represented the long-term commitments of the political community even when short-term majorities chose to ignore them.

Applied to Hindu personal law in Bangladesh, the Bickelian analysis is illuminating. The discrimination against Hindu women embedded in the unmodified Dayabhaga rules is not a policy choice that reflects the considered judgment of the democratic community about how competing interests should be balanced. It is a historical residue of colonial-era law-making that has never been democratically revisited. The Bangladesh Constitution explicitly commits the state to equality before the law and prohibits discrimination on grounds of religion and sex. These are constitutional commitments made in the name of the entire people of Bangladesh, not merely its Hindu minority. When the legislature fails, over more than fifty years, to honor these commitments in the specific domain of Hindu personal law, the argument that judicial enforcement of those commitments is anti-democratic is not just incomplete. It is simply wrong. The democratic commitment to equality and non-discrimination, expressed in the Constitution, is being violated by the legislative inaction that perpetuates discriminatory personal law rules.

The more sophisticated theoretical justification for strategic constitutional litigation in this field comes, however, not from the countermajoritarian literature but from the theory of transformative constitutionalism. Karl Klare, in his seminal 1998 article examining the post-apartheid South African Constitution, coined the term to describe a constitutional order whose aspiration is not merely to protect existing rights but to transform the underlying social and economic structures that produce rights violations. A transformative constitution, on Klare's account, is not merely a constraint on state action but an affirmative mandate for state action to change the conditions that make rights violations possible. Courts operating under a transformative constitution are not merely checking the legislature against a set of negative rights. They are participating in a collaborative enterprise of social transformation, reading the constitutional text in light of its transformative aspirations, and requiring state institutions, including legislatures, to fulfill their obligations under those aspirations.

This is precisely the theoretical framework within which constitutional litigation on Hindu personal law in Bangladesh should be conceived. The Bangladesh Constitution's commitment to equality, non-discrimination, and the dignity of all citizens is not merely a constraint on what the state may do. It is a mandate for what the state must do, including in the domain of personal law. The state's failure to reform discriminatory Hindu personal law rules is not merely an omission. It is an ongoing violation of the constitutional order, one that courts are empowered and, under the theory of transformative constitutionalism, obligated to address.

31.2 The Comparative Experience of Strategic Litigation in Personal Law Reform

The comparative experience of constitutional litigation as a driver of personal law reform is rich, complex, and in many respects instructive for the Bangladeshi context. The three most relevant comparative systems are those of India, South Africa, and Nepal, each of which offers important lessons for a Bangladeshi litigation strategy.

The Indian experience is simultaneously the most relevant and the most cautionary. Relevant because India is the closest comparator in terms of legal tradition, shared colonial heritage, and the specific character of Hindu personal law. Cautionary because the Indian Supreme Court's record on personal law reform through constitutional litigation has been deeply inconsistent, producing moments of genuine boldness alongside long periods of institutional timidity that stand as a warning against excessive reliance on courts as the primary vehicle for personal law reform.

The landmark case of Shah Bano Begum versus Mohammed Ahmad Khan, decided by the Supreme Court of India in 1985, is the most famous illustration of both the potential and the limits of judicial intervention in personal law. The Supreme Court, in an opinion by Chief Justice Y.V. Chandrachud, held that a divorced Muslim woman was entitled to maintenance from her former husband under the general criminal law even after the expiry of the iddat period. The court's reasoning drew explicitly on constitutional values of equality and dignity and made bold observations about the discriminatory character of Muslim personal law as applied to divorced women. The judgment provoked an enormous political backlash from conservative Muslim opinion, and the government of Rajiv Gandhi responded by enacting the Muslim Women (Protection of Rights on Divorce) Act of 1986, which effectively reversed the Supreme Court's ruling through legislation specifically designed to remove divorced Muslim women from the scope of the general maintenance law.

The Shah Bano episode teaches several lessons that are directly relevant to a Bangladeshi litigation strategy. First, that judicial intervention in the field of personal law can produce results, including constitutional declarations of principle and specific relief for individual litigants, even when the substantive law has not been reformed by the legislature. Second, that judicial decisions that are seen as threatening to the religious autonomy of a majority community can provoke a political backlash that reverses the judicial gain through legislative action. Third, and most importantly for the present discussion, that the success of constitutional litigation in this field depends not only on the quality of the legal arguments but on the political context in which

those arguments are made, and on the ability of reform advocates to build and maintain public support for the principles at stake.

The Bangladeshi context differs from the Indian one in a crucial respect, however. The personal law that constitutional litigation would challenge in Bangladesh is not the personal law of the Muslim majority but the personal law of the Hindu minority. The political dynamics of personal law litigation in Bangladesh are therefore almost entirely reversed from the Indian context. In India, challenges to Muslim personal law invoke fears of Hindu majoritarian encroachment that can mobilize enormous political resistance. In Bangladesh, challenges to Hindu personal law do not implicate the religious sensitivities of the majority community in the same way, and the political resistance is likely to come not from the majority community but from conservative elements within the Hindu minority itself. This difference in political dynamics makes constitutional litigation on Hindu personal law in Bangladesh, in one important sense, politically less dangerous than the Indian experience of Shah Bano might suggest, though it creates its own distinct political challenges to which we will return in Chapter Thirty-Seven.

The South African experience of constitutional litigation in the personal law field is in many ways more encouraging. The Constitutional Court of South Africa, operating under a Constitution with an explicitly transformative character and a broadly conceived Bill of Rights that includes dignity as a foundational value, has produced a series of decisions that have directly required the reform of personal law rules that discriminate against women and against vulnerable groups. The case of Bhe versus Magistrate, Khayelitsha, decided in 2004, is the most directly analogous to the challenges available in Bangladesh. In Bhe, the Constitutional Court struck down the rule of primogeniture in customary law of succession, which provided that only male relatives could inherit under African customary law, as a violation of the constitutional guarantees of equality, dignity, and freedom from discrimination on grounds of gender and sex. The court drew explicitly on the transformative character of the Constitution and on its aspiration to reshape the social arrangements that perpetuate discrimination, and it issued an order that effectively required the application of a non-discriminatory succession framework to customary law succession pending legislative action.

The Bhe judgment is enormously significant for Bangladeshi litigation strategy for several reasons. It demonstrates that courts can and do invalidate personal law rules that discriminate on grounds of sex, even when those rules have the status of deeply embedded traditional or customary practice. It demonstrates that the argument from cultural or religious tradition cannot, under a rights-respecting constitutional order, provide an absolute shield for discriminatory rules. And it demonstrates that courts can provide interim relief, prescribing the constitutional standard that must be applied pending legislative reform, rather than simply declaring a rule invalid and leaving a legal vacuum that itself creates injustice.

The Nepalese experience of constitutional litigation in personal law reform is most recent and in some ways most instructive for the specific moment Bangladesh now occupies. Nepal's Supreme Court has, over the period from 2007 to the present, issued a series of orders in PIL cases that have directly shaped the personal law reform process, including orders requiring the legislature to introduce legislation guaranteeing equal inheritance rights for daughters, orders requiring the

abolition of rules permitting polygamy, and orders requiring the state to implement the gender equality provisions of the 2015 Constitution in the domain of personal law. These judicial orders played a direct role in shaping the National Civil Code of 2017, which represents Nepal's most comprehensive attempt to establish an equal, non-discriminatory personal law regime. The Nepalese experience demonstrates the potential of PIL proceedings in constitutional courts to function as a catalyst for legislative reform, creating a legal and political pressure that pushes legislatures toward action they might not otherwise take.

31.3 Public Interest Litigation as the Preferred Instrument

In the specific context of Bangladesh, the appropriate instrument for constitutional litigation in the field of Hindu personal law is not conventional adversarial litigation but public interest litigation, PIL. The distinction is crucial. Conventional adversarial litigation requires an individual plaintiff with a specific legal injury, the standing to bring that specific claim, and a remedy that addresses that individual injury. It is appropriate when the legal wrong affects specific individuals in ways that can be addressed by specific remedies. Personal law reform raises issues of a different character. The discriminatory rules of Hindu personal law affect not specific individuals in idiosyncratic ways but an entire community, systematically and structurally, through rules that deny rights by their very existence rather than by their wrongful application in specific cases.

PIL, as developed in the South Asian constitutional tradition, responds to precisely this kind of structural, systemic legal wrong. In India, the doctrine of PIL was developed through a series of landmark Supreme Court decisions from the late 1970s onward, beginning with cases like Hussainara Khatoon versus State of Bihar and SP Gupta versus Union of India, in which the court expanded its conception of who has standing to bring constitutional challenges and what kinds of relief are available in such challenges. Under the liberal standing rules that PIL developed, any person acting in the public interest can approach the court on behalf of those who cannot themselves access the legal system, including groups whose members are systemically disadvantaged, poor, or legally illiterate. The court can issue wide-ranging remedial orders that address the systemic nature of the wrong rather than merely providing individual relief.

Bangladesh's PIL jurisprudence has, as we shall examine in Chapter Thirty-Four, developed in significant ways since independence, drawing on the Indian experience and adapting it to the specific context of the Bangladesh Constitution. The High Court Division of the Supreme Court of Bangladesh has entertained PIL applications across a wide range of public interest matters, including environmental cases, cases concerning the rights of women and children, and cases raising constitutional challenges to discriminatory legislation. The jurisprudence has not been consistent, and the court has not always been bold in issuing wide-ranging remedial orders. But the procedural and doctrinal framework for PIL applications is well established, and the scope of the right of access to the court established by Article 44 and Article 102 of the Constitution provides a solid procedural foundation for the kind of strategic litigation this Part proposes.

The most recent and most significant development in Bangladesh's PIL jurisprudence directly relevant to the present discussion is the Shishubar Dhali case, decided by the Appellate Division

of the Supreme Court in 2023 and reported at 18 SCOB [2023] AD 20. That case, involving the inheritance rights of a daughter's daughter under the Dayabhaga School, is the most important judicial decision on Hindu personal law in Bangladesh since independence. It demonstrates that the Supreme Court is willing to engage with constitutional arguments about gender equality in the context of Hindu personal law, that it is willing to draw on the Dayabhaga tradition itself to reach conclusions that advance gender equality, and that it views the constitutional mandate of equality as directly applicable to the interpretation of Hindu personal law rules. The Shishubar Dhali decision is thus both a precedent and a template: it tells us the kind of argument the Supreme Court is receptive to and the kind of reasoning it finds persuasive.

31.4 The July Charter as a New Constitutional Horizon

The entire landscape of constitutional litigation strategy must be assessed in light of the transformative constitutional moment represented by the July Charter of 2025 and the referendum of February 2026 that endorsed it. The referendum, in which sixty-one percent of voters approved the reform package, gives political legitimacy of the highest order to the constitutional principles the Charter embodies. The new parliament, which has a mandate to implement the Charter's provisions within a constitutionally prescribed period, must engage with those principles in every domain of legislation, including the domain of personal law reform.

The July Charter's most directly relevant provisions for present purposes are those that expand the conception of fundamental rights, that recognize Bangladesh as a nation of multiple ethnicities, religions, languages, and cultures, and that commit the state to the coexistence and proper dignity of all communities. The Charter's language, which its authors have described as designed to foster greater inclusivity and uphold minority rights, is not merely aspirational. It is a specific constitutional commitment that has been democratically endorsed and that creates enforceable obligations. A constitutional litigant arguing for the reform of Hindu personal law can now point not merely to the pre-existing equality and non-discrimination provisions of the Constitution but to the newly enhanced constitutional framework of the July Charter as the basis for her claim.

The expansion of fundamental rights contemplated by the Charter, specifically the proposal to make justiciable rights of what were previously non-justiciable principles of state policy, is of enormous potential significance. The Bangladesh Constitution has historically divided its normative commitments between Part II, which contains the Fundamental Principles of State Policy including commitments to social justice and the emancipation of women, and Part III, which contains the Fundamental Rights that are directly enforceable by the courts. This structure has meant that the state's commitment to the emancipation of women, articulated in Article 10 and related provisions, has been non-justiciable: one could point to it as an expression of constitutional aspiration but not as the basis for a court order. The Charter's proposal to unify these parts of the Constitution into a single enforceable Bill of Rights would transform this situation, making the commitment to women's emancipation directly enforceable and providing a new constitutional hook for challenges to discriminatory personal law rules.

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CHAPTER THIRTY-TWO: THE CONSTITUTIONAL PROVISIONS: A MAP OF APPLICABLE LAW

32.1 The Fundamental Rights Framework: Articles 27, 28, 31, and 41

The constitutional basis for challenges to discriminatory Hindu personal law rules in Bangladesh rests primarily on four provisions of the Constitution, each of which raises distinct arguments and each of which has been the subject of both judicial interpretation and scholarly controversy. A comprehensive litigation strategy requires a thorough understanding of each of these provisions, their scope, their limitations, and the arguments by which their limitations might be overcome.

Article 27 of the Bangladesh Constitution provides, in terms of deceptive simplicity, that all citizens are equal before law and are entitled to equal protection of law. This equality guarantee is one of the foundational provisions of the constitutional order and its meaning has been elaborated in a substantial body of case law. The key distinction for present purposes is between formal equality and substantive equality. A purely formalist interpretation of Article 27 would hold that Hindu personal law does not violate equality because it applies equally to all Hindus, that is, it does not single out any individual Hindu for differential treatment. But substantive equality analysis, which has been increasingly embraced by South Asian constitutional courts following the lead of constitutional scholarship and international human rights law, recognizes that equality is violated not only by rules that single out particular individuals but by rules that apply across the board within a group but impose structural disadvantages on certain members of that group. A rule that denies all Hindu daughters the right to inherit equally with their brothers does not single out any particular daughter, but it is nonetheless a systematic denial of equal treatment along lines of gender. The substantive equality argument is that Article 27 prohibits this kind of systematic, structural inequality as well as the more obvious kind of individual singling out.

Article 28 of the Bangladesh Constitution is both more specific and more powerful as a basis for challenge to discriminatory Hindu personal law rules. Article 28(1) provides that the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, or place of birth. Article 28(2) provides that women shall have equal rights with men in all spheres of the state and of public life. Article 28(4) provides that nothing in this article shall prevent the state from making special provision in favor of women or children or for the advancement of any backward section of citizens.

The prohibition in Article 28(1) on discrimination on grounds of sex is the most direct constitutional basis for challenging the gender-discriminatory provisions of Hindu personal law. A rule that gives sons a right of inheritance that daughters do not share is, on its face, a rule that discriminates on grounds of sex. The argument that this discrimination is permitted because it is embedded in religious personal law rather than in general civil or criminal law raises the question of the scope of Article 28(1): does the prohibition on sex discrimination apply only to the state's general laws, or does it apply to personal law rules that derive from religious practice?

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This is the crucial question on which the litigation strategy must be built, and it is a question that admits of more than one answer at different levels of legal analysis. At one level, the answer seems clear: Article 28(1) binds the state, and personal law in Bangladesh is applied by state courts, which means that when a state court applies a discriminatory personal law rule, the state is discriminating through its judicial apparatus. The discrimination is not the conduct of the individual litigants but the conduct of the state, embodied in the rule it applies and enforces. On this analysis, Article 28(1) applies directly to personal law rules, and discriminatory Hindu personal law rules violate it.

At another level, however, the analysis is complicated by the recognition in Article 41 of freedom of religion and by the complex relationship between equality norms and religious autonomy that pervades the jurisprudence of all constitutional systems that recognize both. Article 41 of the Constitution provides that every citizen has the right to profess, practice, or propagate any religion, and that every religious community or denomination has the right to establish, maintain, and manage its religious institutions. This provision has been invoked in various contexts to argue that the state cannot, without violating religious freedom, impose civil law standards on the personal law of religious communities.

The resolution of this tension between equality and religious freedom is not unique to Bangladesh. It is a question that constitutional courts in India, South Africa, Canada, and other jurisdictions have grappled with extensively, and the weight of reasoned judicial opinion globally has moved decisively toward the position that religious freedom does not provide an absolute shield for personal law rules that violate constitutional equality guarantees. The key distinction that has emerged in this jurisprudence, and that Bangladeshi courts should be urged to adopt, is the distinction between the religious and the secular dimensions of personal law. Rules of marriage ceremony, of religious ritual, of theological doctrine, are genuinely religious in character and the state has no business imposing civil law standards upon them. But rules of property, inheritance, and succession, rules that determine who owns what and who may control economic resources, are not purely religious in character. They are legal rules with profound secular consequences, and the state's enforcement of them through its courts and legal system means that it cannot claim to be merely accommodating private religious practice. It is instead actively imposing, through the force of law, economic arrangements that systematically disadvantage women.

32.2 Article 31 and the Right to Life and Personal Liberty

Article 31 of the Bangladesh Constitution provides that every citizen has the right to the protection of the law and the right not to be treated in a manner inconsistent with that protection. Read together with the right to life provisions that Bangladesh courts have construed as implying a right to a dignified life, Article 31 provides a further constitutional basis for challenging the conditions that discriminatory Hindu personal law creates for women.

The argument from Article 31 in the context of Hindu personal law is not simply that the discriminatory rules violate formal legal equality. It is that they create conditions of systematic dependence, vulnerability, and deprivation that are incompatible with the dignified life that the

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constitutional order guarantees to all citizens. A Hindu widow who has no right to inherit her husband's property, who must depend on male relatives for her survival, who has no independent economic standing in the family, is not merely a victim of an unequal legal rule. She is a person whose capacity for autonomous life, for self-determination, for the exercise of her constitutional rights, is systematically undermined by the legal conditions under which she must live. The right to a dignified life, to the minimum conditions of human flourishing, is not satisfied by formal equality guarantees that leave a person in practice unable to exercise any meaningful autonomy.

This argument draws on the substantial jurisprudence of the Indian Supreme Court under Article 21, which guarantees the right to life and personal liberty. The Indian courts have construed Article 21 as encompassing a right to live with dignity, a right to livelihood, a right to the conditions necessary for human flourishing. Bangladesh's Article 31 and 32, taken together, provide the constitutional basis for a similar jurisprudence, and the argument that the systematic impoverishment of Hindu widows and daughters through discriminatory inheritance law violates their right to a dignified life is one that a progressive and constitutionally sophisticated court should find compelling.

The development of this argument since 2024 has been shaped by the growing recognition, in both academic and judicial writing, that the formal equality guaranteed by non-discrimination provisions is insufficient without a concurrent commitment to substantive equality that addresses the material conditions that enable or disable the exercise of rights. Feminist constitutional scholars including Sandra Fredman, whose work on multidimensional equality has been enormously influential, Khaled Ahmed Ali working in comparative constitutional law, and South African scholars like Cathi Albertyn and Beth Goldblatt writing on social and economic rights and their relationship to gender equality have all advanced versions of the argument that rights to dignity and life require not merely formal non-discrimination but positive state action to address the conditions that deprive people of the material foundations of dignified life. This scholarship provides the intellectual resources for an Article 31 argument that goes beyond formal equality to demand affirmative action in the form of personal law reform.

32.3 The New Constitutional Landscape: July Charter Provisions and Their Implications

The constitutional landscape created by the July Charter of 2025, as endorsed by the February 2026 referendum, adds several dimensions to the constitutional framework within which litigation strategy must be conceived. Several of the Charter's provisions are directly relevant to the legal situation of Hindu women in Bangladesh.

The Charter's recognition of Bangladesh as a nation of multiple ethnicities, religions, languages, and cultures, and its commitment to the coexistence and proper dignity of all communities is particularly significant. This provision, if implemented as a constitutional amendment, would represent a direct textual commitment by the constitutional order to the proper dignity of the Hindu community as such. It would provide an additional constitutional hook for arguments that the failure to reform Hindu personal law denies the Hindu community its proper dignity within the constitutional order, treating its members as second-class citizens who do not merit the legislative attention that the reform of their personal law would require.

The Charter's commitment to expanding and making justiciable the rights currently described as principles of state policy creates potential constitutional support for personal law reform claims that currently lacks direct judicial enforceability. Article 10 of the existing Constitution commits the state to ensuring the participation of women in national life. Article 19 commits the state to ensuring equality of opportunity for all citizens. Article 21 imposes duties on citizens and the state in relation to the constitutional order. None of these provisions is currently directly justiciable, meaning courts cannot directly enforce them in the way they enforce the fundamental rights in Part III. The Charter's proposal to create a unified enforceable Bill of Rights would change this, making Article 10's commitment to women's participation and Article 19's equality of opportunity directly enforceable constitutional rights. A litigation strategy designed for the post-Charter constitutional order must take account of these enhanced constitutional resources.

There is also the matter of the new constitutional attention to transitional justice and the protection of fundamental rights even during states of emergency, promised by the Charter. The argument has been made, and this treatise endorses it, that the legal situation of the Hindu minority in Bangladesh is itself a form of ongoing constitutional injustice, that the failure to reform their personal law over more than fifty years is not merely administrative oversight but a systematic subordination of a minority community's rights that the constitutional order requires the state to remedy. The Charter's enhanced focus on rights protection and minority dignity provides a new constitutional vocabulary in which this argument can be made.

32.4 The Relevant International Law Dimension of the Constitutional Framework

Bangladesh's constitutional order does not operate in isolation from the international human rights framework to which Bangladesh is committed through treaty ratification. The Constitution of Bangladesh, like many post-colonial constitutions, does not explicitly incorporate international treaty obligations into domestic law. Unlike the constitutions of South Africa and India, which contain provisions specifically directing courts to consider international law when interpreting constitutional rights, the Bangladesh Constitution is silent on this question.

However, the practice of the Bangladesh Supreme Court in constitutional cases has increasingly drawn on international human rights standards as interpretive guides to the meaning of constitutional rights provisions. The principle that constitutional rights provisions should be interpreted consistently with Bangladesh's international human rights obligations where such interpretation is possible has been accepted in several judicial decisions, and the argument for expanding this practice in the context of Hindu personal law reform is strong.

The most directly relevant international instruments are the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which Bangladesh ratified in 1984, the International Covenant on Civil and Political Rights (ICCPR), which Bangladesh ratified in 2000, and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which Bangladesh ratified in 1998. All three instruments impose obligations on Bangladesh to ensure equality between men and women in the domain of family law and property rights, and all three have monitoring bodies that have specifically identified Bangladesh's failure to reform Hindu personal law as a violation of its international obligations.

The CEDAW Committee's concluding observations on Bangladesh have repeatedly called attention to the discriminatory character of Hindu personal law and have required Bangladesh to take legislative measures to ensure that women in all communities enjoy equal rights in the domains of marriage, divorce, inheritance, and maintenance. The Human Rights Committee, monitoring compliance with the ICCPR, has made similar observations. The argument that these international obligations should inform the interpretation of constitutional equality provisions in the domestic courts is not merely an academic proposition. It is the standard approach adopted by most of the world's major constitutional courts and it is the approach that a sophisticated constitutional litigant should urge upon the Bangladesh courts.

The July Charter's enhanced attention to fundamental rights, including the expansion of the rights framework and the commitment to their effective implementation and constitutional protection, provides new domestic constitutional authority for the proposition that international human rights standards are relevant to the interpretation of fundamental rights provisions. A court deciding a constitutional challenge to discriminatory Hindu personal law in the post-Charter constitutional order should be urged to interpret the equality and dignity provisions of the Constitution in light of Bangladesh's CEDAW, ICCPR, and ICESCR obligations, using the principle of evolutive interpretation to ensure that the constitutional protections keep pace with the developing standards of international human rights law.

CHAPTER THIRTY-THREE: THE SPECIFIC CONSTITUTIONAL ARGUMENTS AGAINST DISCRIMINATORY HINDU PERSONAL LAW RULES

33.1 The Inheritance Rules: Constitutional Vulnerabilities and the Arguments Against Them

The most immediately vulnerable and constitutionally problematic domain of Hindu personal law in Bangladesh is the law of inheritance and succession. The Dayabhaga rules of inheritance, as applied in Bangladesh in their unreformed colonial-era form, discriminate against women in several distinct ways, each of which gives rise to distinct constitutional arguments.

The first and most fundamental discrimination is the preference of male heirs over female heirs in the succession to a deceased person's property. Under the classical Dayabhaga as interpreted in the colonial tradition and as applied in Bangladesh, sons take precedence over daughters in the inheritance of paternal property. A daughter who has a father's entire estate to inherit finds herself displaced by the presence of a brother or brothers, however distant, whose male status gives them a superior claim under the classical rules. This preference of male heirs is, on its face, a discrimination on grounds of sex of the clearest kind: the only relevant difference between the male and female heirs is their sex, and it is their sex that determines their inheritance rights. The constitutional argument against this rule under Article 28(1) is as clear and direct as any argument in the law: the state, through its courts, is discriminating against daughters on grounds of sex when it applies a rule that gives brothers a superior inheritance claim merely because of their sex.

The counter-argument from religious freedom, that this rule is a matter of religious personal law that the state may not interfere with under Article 41, is weaker than it might appear. The right to practice religion, guaranteed by Article 41, protects the right to perform religious ceremonies, to follow religious doctrine in matters of belief and worship, and to manage the institutions of religious community life. It does not protect the right to use the machinery of the state to enforce property rules that discriminate on grounds of sex. The state's enforcement of discriminatory inheritance rules through its courts is a state action, not a private religious practice, and the state cannot claim the protection of religious freedom for its own discriminatory conduct.

The Shishubar Dhali case provides important support for this argument. In that case, the Appellate Division of the Bangladesh Supreme Court read the Dayabhaga rules in a way that was specifically attentive to constitutional equality principles, holding that daughters and sons inherit their mother's Stridhan equally and absolutely. The court's reasoning was not simply that the Dayabhaga text was clear, though it was. The court was also clearly influenced by the constitutional context in which Hindu personal law cases are decided. The Shishubar Dhali decision establishes that the Bangladesh Supreme Court is willing to read Hindu personal law rules in a manner that advances gender equality, and it suggests that the court would be receptive to arguments that discriminatory rules be struck down or reinterpreted where they cannot be made consistent with constitutional equality principles.

The second major discrimination in the inheritance domain is the limitation on women's inherited interests. Even where a Hindu woman does inherit property under the Dayabhaga rules, her interest has historically been limited, in certain circumstances, to a life interest rather than an absolute ownership interest. The Hindu Women's Right to Property Act of 1937 addressed this in some respects by giving widows a share in property equal to that of a son, but the limitation to a life interest persisted in many contexts, and the Act itself falls far short of full property equality. The constitutional argument against the life interest limitation is a strong one: the difference between a full ownership interest in property and a life interest is the difference between genuine economic security and a temporary and precarious form of economic accommodation. A Hindu widow who holds property only for her lifetime, with no power of disposition, with no ability to use the property as collateral for credit or economic advancement, and with the property reverting at her death to male relatives, is not genuinely empowered. She is instead accommodated in a way that maintains the fundamental structure of male property control while making minimal concessions to her bare subsistence needs.

The third major discrimination, and perhaps the most structurally significant, is the exclusion of daughters from coparcenary property rights. Under the Dayabhaga system, the concept of coparcenary is less prominent than under the Mitakshara system that prevails in India outside Bengal. But the Dayabhaga tradition does recognize certain forms of joint family property, and the rules governing daughters' rights in such property are discriminatory in ways that closely parallel the Mitakshara coparcenary discrimination that the Indian Parliament addressed through the 2005 amendment to the Hindu Succession Act. The constitutional argument for full equality of daughters in joint family property is supported both by the equality provisions of the Constitution and by the comparative example of India, where the Supreme Court in Vineeta

Sharma versus Rakesh Sharma confirmed in 2020 that daughters have the same coparcenary rights as sons by birth, not merely by legislative grant.

33.2 The Marriage Rules: Constitutional Arguments Against the Sacramental Model

The treatment of Hindu marriage as an indissoluble religious sacrament, without any statutory provision for divorce in Bangladesh, creates a constitutional vulnerability of a different character from the inheritance discrimination. The argument is not simply that a specific rule discriminates on grounds of sex, though the de facto impact of the absence of divorce on Hindu women is vastly greater than its impact on Hindu men, for reasons of economic power and social dependency that are well established. The deeper constitutional argument is that the complete denial of exit from marriage, in a constitutional order that guarantees the dignity and autonomy of all citizens, is incompatible with the constitutional conception of a person as an agent capable of self-determination.

The development of a constitutional right to exit a failed marriage, as a dimension of the right to dignity and personal liberty, has been a significant development in comparative constitutional jurisprudence since the 1990s. The Indian Supreme Court, in a series of cases including the landmark judgment in Navtej Singh Johar versus Union of India in 2018, which decriminalized homosexual conduct, engaged in a rich analysis of dignity as a constitutional value that encompasses the right to personal autonomy in matters of intimate life. While the Navtej Singh Johar case was concerned with a different set of rights, its analysis of dignity as encompassing the right to make fundamental decisions about one's intimate life has direct relevance to the question of whether the denial of divorce to Hindu women is consistent with a constitutional order that takes dignity seriously as a foundational value.

The argument can be stated simply: a person who is compelled to remain in a marriage against her will, without any legal mechanism to dissolve the relationship, to establish her separate legal identity, to secure her economic independence, or to pursue a new relationship, is a person whose fundamental autonomy and dignity are violated by the legal conditions under which she lives. This violation is not merely the result of social pressure or cultural norms. It is the direct result of state action, or rather state inaction: the state's refusal to provide any legal mechanism for the dissolution of Hindu marriage. The state cannot claim to respect the dignity and autonomy of Hindu women while simultaneously refusing to provide them with the most basic legal instrument of self-determination in the domain of intimate life.

The counter-argument that divorce is contrary to Hindu religious doctrine and that requiring the state to provide it would violate religious freedom is not unimportant, but it is less powerful than it appears. The argument from religious freedom would have force if the state were compelling Hindu couples to divorce, or if it were imposing a definition of marriage that contradicted Hindu religious doctrine. But the state is not being asked to do either of these things. It is being asked to provide a civil legal mechanism for the dissolution of a marriage when the parties, or one party, seeks it. Just as the existence of civil marriage does not compel religious people to abandon their religious conception of marriage, the existence of a civil mechanism for divorce does not compel any Hindu to divorce or to regard divorce as anything other than religiously prohibited. The

constitutional argument is that the state, in a constitutional order committed to the dignity and autonomy of all citizens, cannot refuse to provide any legal mechanism for exit from an intolerable marriage merely because the dominant community interpretation of a religion opposes divorce.

There is a further constitutional dimension to the absence of divorce that deserves specific attention in the post-Charter constitutional order. The Hindu Marriage Registration Act of 2012, the only legislative action on Hindu personal law since independence, permits the registration of Hindu marriages. Registration creates a record of marriage, and the existence of such records makes it more rather than less urgent to have a legal mechanism for dissolution. A registered marriage that cannot be dissolved is a more powerful form of legal constraint on the parties than an unregistered one, since the registered marriage creates documentary evidence of the parties' legal relationship that has implications for property, for maintenance, and for the parties' capacity to form new relationships. The legislative decision to create a registration system without also creating a dissolution mechanism is a decision that has, in effect, tightened the constraints on Hindu women without providing any compensating benefit. This legislative inconsistency can itself be argued to violate the constitutional principle of coherence and the requirement that state action in the field of rights protection be reasonably connected to the constitutional values it purports to serve.

33.3 The Adoption Rules: Constitutional Arguments for a Non-Discriminatory Framework

The Hindu law of adoption in Bangladesh, as we have examined in earlier parts of this treatise, contains several features that are discriminatory on grounds of sex and that create practical hardships for families seeking to adopt children in conformity with their religious traditions. The most constitutionally problematic features are the requirement that a male child be adopted (the traditional preference for male adoptees), the restriction on who may adopt (wives in certain circumstances have no independent right to adopt), and the absence of any codified adoption law that would make the rules accessible and predictable for ordinary people.

The constitutional argument against the male-only or male-preferred adoption rule is straightforward: it discriminates against female children on grounds of sex, denying them the benefit of adoption by treating them as less desirable adoptees than their male counterparts. This is a discrimination that affects children, a class of persons who are specifically protected by Article 28 and who have a special claim to the protection of their fundamental rights precisely because they cannot effectively advocate for themselves. The argument that this preference is a matter of religious tradition and is therefore protected by Article 41 fails for the same reasons that the equivalent argument in the inheritance context fails: the state enforces these rules through its courts, and it cannot claim religious freedom as a defense for its own discriminatory enforcement practices.

The restriction on women's independent right to adopt is a further constitutional vulnerability. A married Hindu woman, under the traditional rules as applied in Bangladesh, can adopt only with her husband's consent and in many interpretations can adopt only a son for her husband, not for herself. These restrictions treat women as legally incapable of making an independent decision

about adoption, subordinating their reproductive and parenting choices to the authority of their husbands. The constitutional argument is that these restrictions violate Article 28 by treating women as having inferior legal capacity to men in a domain of intimate personal decision-making. The state, by enforcing these rules, is not merely accommodating a religious tradition. It is actively denying women equal legal personhood in the domain of family formation.

33.4 The Maintenance Rules: Constitutional Arguments for Adequate Support Obligations

The rules governing maintenance for Hindu women in Bangladesh, specifically the obligations of husbands to maintain wives and of adult children to maintain parents, are not entirely without legal basis, but they are inadequate in several specific and constitutionally significant respects. The most important constitutional vulnerability in the maintenance domain is the intersection of the maintenance rules with the absence of divorce: in the absence of any statutory divorce law, the question of maintenance for separated or abandoned wives falls in a legal no-man's land that courts have navigated with considerable difficulty and inconsistency.

The constitutional argument for an adequate and codified maintenance scheme for Hindu women draws on both the equality provisions of the Constitution and on the right to a dignified life that Articles 31 and 32 protect. A woman who has been abandoned by her husband and who, under the rules of Hindu personal law, can obtain neither a divorce nor a reliable maintenance order, is a person whom the legal system has effectively abandoned. She has no independent economic rights in her husband's property because she holds no absolute ownership interest. She has no maintenance remedy of predictable and adequate scope because the law governing maintenance is uncodified and inconsistently applied. And she has no means of legally dissolving her marriage and thereby freeing herself to rebuild her life independently. This triple deprivation, this legal trapping, is a condition that the constitutional order of Bangladesh, committed as it is to the dignity and equality of all citizens, should not permit to continue.

The argument from the right to a dignified life is particularly powerful in this domain because it connects the formal legal question to the material conditions of women's lives. The Indian Supreme Court's development of the right to a dignified life as a dimension of Article 21, and the increasing recognition in comparative constitutional law that the right to dignity has a material or distributive dimension that requires the state to provide the minimum conditions necessary for dignified life, provides the intellectual foundation for arguing that a constitutional order that denies adequate maintenance remedies to abandoned women is violating their constitutional rights in a direct and remediable way.

CHAPTER THIRTY-FOUR: WRIT JURISDICTION, LOCUS STANDI, AND THE PROCEDURAL PATHWAYS OF CONSTITUTIONAL LITIGATION

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34.1 The Writ Jurisdiction of the High Court Division

The constitutional architecture of Bangladesh provides two primary vehicles for the enforcement of fundamental rights through judicial process: the original jurisdiction of the High Court Division of the Supreme Court, exercised through writ applications under Article 102, and the appellate jurisdiction of the Appellate Division, which hears appeals from the High Court Division including constitutional appeals.

Article 102(1) of the Constitution empowers the High Court Division, on the application of any person aggrieved, to give directions or orders to any person or authority, including any person performing any function in connection with the affairs of the Republic, as may be appropriate for the enforcement of any of the rights conferred by Part III of the Constitution. Article 102(2) empowers the court to make orders requiring a person doing an act under the authority of law to refrain from doing such act, directing that a person be produced before a court, requiring the performance of a legal duty, questioning the legality of an action, and similar remedial orders. Together, these provisions give the High Court Division a broad and flexible jurisdiction to enforce constitutional rights, issue declarations of constitutional invalidity, and order public authorities to take or refrain from taking specific actions.

The writs available under Article 102 include certiorari (to quash decisions of inferior courts or tribunals), mandamus (to order the performance of a legal duty), habeas corpus (to secure the liberty of unlawfully detained persons), prohibition (to prevent an inferior court from exceeding its jurisdiction), and quo warranto (to challenge the authority of a person to hold a public office). In the context of constitutional challenges to Hindu personal law, the most relevant writs are certiorari, to challenge specific court decisions applying discriminatory rules, and mandamus, to require the legislature or executive to take action required by the Constitution.

The use of mandamus to require legislative action is particularly significant because it has the potential to create a judicially imposed deadline for personal law reform. The argument is straightforward: if the Constitution requires the state to ensure equality before the law and to refrain from discrimination on grounds of sex, and if the failure to reform Hindu personal law constitutes a violation of these constitutional requirements, then the court may issue a mandamus order requiring the government to introduce reform legislation within a specified period. This approach has been used to powerful effect in several South Asian constitutional systems, most notably in Nepal, where the Supreme Court's orders requiring legislative action on personal law reform created the political pressure that ultimately produced the National Civil Code of 2017.

34.2 Locus Standi and the Expansion of Standing

The traditional requirement of standing in adversarial litigation, which requires the applicant to demonstrate a direct personal injury from the act challenged, creates practical difficulties for strategic constitutional litigation in the personal law field. An individual Hindu woman challenging a specific inheritance rule must first find herself in a situation where that rule has been applied against her in a specific case, must have the resources to pursue constitutional litigation, must be willing to accept the personal exposure and community scrutiny that such

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litigation involves, and must have access to legal counsel sophisticated enough to mount a constitutional challenge. Each of these requirements creates a significant barrier to access.

The development of PIL standing rules in Bangladesh, following the lead of India, has relaxed these requirements in ways that significantly expand the practical possibilities for constitutional litigation. Under PIL standing doctrine, any person acting in good faith in the public interest may approach the court on behalf of persons who cannot themselves access the legal system due to poverty, ignorance, social disadvantage, or physical constraint. This means that a law reform organization, an academic institution, a human rights advocacy group, or indeed any concerned citizen can file a PIL application challenging the constitutional validity of discriminatory Hindu personal law rules on behalf of the Hindu women who are affected by those rules.

The Bangladesh Supreme Court's approach to PIL standing has been somewhat inconsistent, with courts in different periods taking more or less expansive views of who qualifies as a person acting in the public interest. The most encouraging precedents are those in which the court has accepted PIL applications from organizations including Ain O Shalish Kendra, BLAST, and the Bangladesh Legal Aid and Services Trust, all of which have actively used PIL to advance women's rights and constitutional equality. The precedents from these cases provide a foundation for PIL challenges to Hindu personal law rules, though the specific application of PIL standing rules to the personal law context will require careful argumentation.

The July Charter's expanded fundamental rights framework, if implemented, may also have implications for standing. If the rights currently described as principles of state policy become directly enforceable, any citizen whose interests are affected by the state's failure to honor those rights may have standing to seek enforcement. This would significantly expand the pool of potential constitutional litigants and reduce the standing barriers that currently constrain PIL applications.

34.3 The Form and Content of a Strategic PIL Application

A strategic PIL application challenging discriminatory Hindu personal law rules should be carefully designed to maximize its chances of success and its utility as a vehicle for constitutional change. The experience of successful PIL applications in both Bangladesh and India provides guidance on the elements that are most important for these purposes.

The application should identify clearly and with appropriate particularity the specific rules being challenged. A challenge to all of Hindu personal law as a whole would likely be dismissed as too broad and too vague to be amenable to judicial relief. A challenge to specific provisions, such as the rule that gives sons precedence over daughters in inheritance, the rule that limits women's inherited interests to a life interest in certain circumstances, or the rule that restricts women's independent right to adopt, is both more legally precise and more likely to produce a judicially manageable order.

The application should establish the facts that demonstrate the practical impact of the challenged rules on the lives of the people affected. Courts are often most persuaded by factual accounts of

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the human consequences of legal rules, not just by abstract legal argument. A PIL application that includes evidence of the conditions in which Hindu widows live when they are excluded from inheritance, of the hardship experienced by Hindu women trapped in abusive marriages with no legal mechanism for exit, and of the confusion and injustice produced by the uncodified and inconsistently applied rules of adoption and maintenance, will be more persuasive than one that confines itself to abstract legal argument.

The application should develop a careful and multi-layered constitutional argument, drawing on the provisions of the Constitution, the interpretation of those provisions in the case law of the Bangladesh Supreme Court and the courts of other South Asian countries, the international human rights standards to which Bangladesh is committed, and the scholarly literature on the relationship between constitutional equality principles and personal law reform. The argument should be structured in layers, beginning with the strongest and most direct argument and then developing alternative and supplementary arguments that the court could use if it does not accept the primary argument.

The application should propose a specific and judicially manageable form of relief. Courts are more willing to issue orders when they can see a clear path to implementation. The most appropriate relief in a PIL application challenging Hindu personal law rules would be a declaratory order that the challenged rules are inconsistent with the Constitution, combined with a mandatory order directing the government to introduce reform legislation within a specified period. This combination of declaratory and mandatory relief is appropriate because it both vindicates the constitutional principle (through the declaration) and creates a concrete mechanism for legislative action (through the mandatory order). It avoids the problem of judicial legislation, since the court is not itself enacting new personal law rules but directing the legislature to do so, while still creating meaningful pressure for legislative action.

34.4 The Role of Amicus Curiae and Expert Evidence

In complex constitutional cases involving specialized fields of law, the practice of receiving submissions from amicus curiae, friends of the court, and from expert witnesses, can be of great importance to the quality of judicial decision-making. A PIL application challenging Hindu personal law rules would benefit enormously from carefully chosen amicus submissions, both to assist the court with the specialized legal and historical questions that such a case raises and to provide the court with a sense of the breadth of academic and professional support for the constitutional arguments being advanced.

The appropriate amici for a PIL challenge to discriminatory Hindu personal law rules would include scholars of Hindu law and jurisprudence who can assist the court with the interpretation of the Dayabhaga tradition and the extent to which the discriminatory rules reflect genuine religious requirements as opposed to colonial-era distortions of the tradition. It would include constitutional law scholars who can assist the court with the relevant provisions of the Constitution and the comparative jurisprudence of personal law reform. It would include international human rights law experts who can assist the court with Bangladesh's treaty obligations and the standards established by the relevant international monitoring bodies. And it

would include sociologists, anthropologists, and economists who can provide the court with evidence about the practical impact of the challenged rules on the lives of Hindu women in Bangladesh.

The use of expert evidence in PIL cases is an area where the Bangladesh courts have been somewhat inconsistent, with some courts being very receptive to expert submissions and others being more restrictive. A litigation strategy that includes provision for expert testimony should be designed to provide the court with the most useful and reliable evidence possible, presented in a format that the court can readily integrate into its deliberations.

CHAPTER THIRTY-FIVE: SPECIFIC CASES AND VEHICLES FOR CONSTITUTIONAL CHALLENGE

35.1 The Inheritance Case: Constructing the Ideal Vehicle

The most important and most likely to succeed constitutional challenge in the field of Hindu personal law in Bangladesh is a challenge to the discriminatory rules of inheritance. The legal arguments are the strongest, the factual record of harm is the most documented, the comparative jurisprudence is the most supportive, and the specific precedent from the Shishubar Dhali case provides the most encouraging judicial foundation. The task for a litigation strategy is to construct the ideal vehicle for this challenge.

The ideal vehicle for an inheritance challenge is a specific case in which a Hindu woman has been denied inheritance rights on grounds of her sex, where the discriminatory rule can be identified with precision, where the facts clearly demonstrate the human harm produced by the rule, and where the constitutional arguments can be developed with reference to both the specific facts and the broader structural pattern of discrimination. The experience of the Shishubar Dhali case, which arose from a specific dispute about the inheritance of Stridhan property, illustrates the kind of case that can provide the vehicle for a significant constitutional ruling.

An inheritance challenge should be structured around a case involving the inheritance of self-acquired property by a daughter where brothers are present and claim preferential inheritance under the Dayabhaga rules. The case should involve a family where the economic stakes are significant enough to make the case worth litigating but not so large that the case becomes primarily about money rather than about principle. The daughter claimant should, ideally, be the person most dependent on the inheritance for her economic security, so that the practical impact of denying her equal inheritance rights is most clearly apparent.

The constitutional argument in such a case would be developed in several layers. The primary argument is that the rule giving brothers precedence over sisters in the inheritance of the father's property violates Article 28(1)'s prohibition on discrimination on grounds of sex, as applied through the state's judicial enforcement of that rule. The secondary argument is that the rule violates Article 27's guarantee of equality before the law by imposing structurally unequal legal

treatment on women solely on grounds of their sex. The tertiary argument is that the rule violates the right to a dignified life guaranteed by Articles 31 and 32 by denying women the economic security necessary for a life of genuine autonomy and dignity.

The constitutional argument should also include a positive dimension: not merely that the discriminatory rule is invalid, but that the Constitution requires the state to provide an equal inheritance regime. This positive dimension of the argument, drawing on the transformative character of the constitutional order and on the state's affirmative obligations under both the Constitution and Bangladesh's international human rights commitments, is more ambitious than the purely negative argument for invalidity but is also more likely to produce the kind of comprehensive judicial order that drives legislative reform.

35.2 The Marriage and Divorce Case: The Most Difficult Vehicle

The challenge to the absence of any divorce provision for Hindu marriages in Bangladesh is constitutionally important but procedurally more difficult than the inheritance challenge. The difficulty arises from the structure of the legal wrong: the absence of divorce is not the application of a specific discriminatory rule to a specific litigant but the complete absence of a legal remedy that the Constitution requires the state to provide. This is a challenge not to a specific act of the state but to state inaction, and courts are traditionally more reluctant to intervene in cases of state inaction than in cases of affirmative discriminatory action.

However, the theoretical framework for compelling legislative action in the face of unconstitutional state inaction is well established in comparative constitutional law. The doctrine of unconstitutional omission, developed in the constitutional jurisprudence of several countries including Germany, South Africa, and Brazil, holds that the failure of the legislature to enact law required by the Constitution can itself be the subject of constitutional review and judicial order. In Germany, the Federal Constitutional Court has on several occasions found that a legislative omission violates the Basic Law and has either itself prescribed a constitutional minimum standard or directed the legislature to enact appropriate legislation within a specified period. In South Africa, the Constitutional Court has similarly found that legislative inactions can violate the Constitution and has directed the legislature to remedy the omission.

The application of the unconstitutional omission doctrine to the absence of Hindu divorce law in Bangladesh would require the court to find that the Constitution imposes on the state an affirmative obligation to provide a mechanism for the dissolution of marriage, and that the complete absence of such a mechanism for Hindu citizens violates the constitutional rights of those citizens. This finding is grounded in the combination of the right to dignity, the right to equal protection of law, and the prohibition on sex discrimination: the state provides divorce mechanisms to Muslim citizens through the Muslim Family Laws Ordinance 1961 and to citizens generally through the Special Marriage Act 1872, but denies this protection entirely to Hindus who do not wish to use the Special Marriage Act framework. This selective denial of a legal remedy constitutes differential treatment that cannot be justified by any constitutionally permissible rationale.

The ideal vehicle for a divorce challenge is a case involving a Hindu woman who has been abandoned or abused by her husband and who seeks legal relief that the existing law is unable to provide. Such a case, framed as a PIL application, would allow the court to confront the full human reality of what the absence of a divorce remedy means for Hindu women in Bangladesh: the permanent legal trapping in a relationship that has been dissolved in every practical sense but remains intact in law, with all the legal consequences that flow from continued legal marriage including the woman's inability to remarry, the man's immunity from the obligation to maintain her beyond what the limited maintenance provisions provide, and the children's uncertain status in the absence of any legally recognized mechanism for addressing the consequences of marital breakdown.

35.3 The Children's Rights Case: A Different Constitutional Vector

One of the most promising and politically sympathetic vehicles for constitutional challenge in the Hindu personal law field is a case that centers on the rights of children rather than the rights of women. The male-preference rule in adoption, which treats female adoptees as legally unavailable or less desirable than male adoptees under the traditional Dayabhaga rules, directly discriminates against girl children on grounds of their sex. A PIL application challenging this rule on behalf of girl children denied the opportunity of adoption would engage constitutional protections not only for women but for children specifically, a class of rights-holders whose vulnerability creates a particularly strong basis for constitutional intervention.

The constitutional argument in a children's rights adoption case would draw on Article 28(1)'s prohibition on sex discrimination, Article 27's equality guarantee, and the specific international human rights standards relating to children including the Convention on the Rights of the Child, which Bangladesh has ratified and which establishes the best interests of the child as the paramount consideration in all matters concerning children. The argument that the best interests of a girl child who needs a loving home cannot be served by a legal rule that treats her sex as a reason to deny her the benefits of adoption is a powerful and emotionally compelling one, and it is a constitutional argument that even a cautious court may find difficult to resist.

35.4 The Codification Case: Challenging Legislative Inaction at the Systemic Level

The most ambitious vehicle for constitutional litigation, and the one most directly targeted at producing comprehensive reform rather than piecemeal change, is what might be called a codification case: a PIL application that challenges not specific discriminatory rules but the overall failure of the Bangladesh state to codify Hindu personal law, arguing that this failure itself violates the constitutional rights of Hindu citizens by denying them the equal legal clarity and accessibility that citizens of other communities enjoy through codified personal law systems.

The codification argument runs as follows: Muslim citizens of Bangladesh have access to a codified personal law system, embodied in the Muslim Family Laws Ordinance of 1961 and related legislation, that gives them clear, accessible, certain rules governing their personal affairs. These rules have been codified, promulgated in Bangla, and are accessible to ordinary citizens and lawyers without specialist knowledge of Islamic jurisprudence. Hindu citizens of

Bangladesh, by contrast, have access to no such system. Their personal law is derived from ancient Sanskrit texts, colonial judicial decisions, and a small number of statutes, none of which has been codified into a single accessible document in Bangla, and all of which require specialist knowledge of a jurisprudential tradition that most Bangladeshi lawyers have not studied. The practical result is that Hindu citizens have substantially less access to their personal law than Muslim citizens, a disparity that violates the constitutional guarantee of equal protection of law under Article 27.

This argument has a distinctive advantage over arguments that target specific discriminatory rules: it does not require the court to engage with the substance of any particular rule but only with the structural disparity in the quality of legal protection available to citizens of different communities. A court that is reluctant to strike down specific religious personal law rules might nonetheless be persuaded to order the codification of Hindu personal law, since codification in itself is a neutral legal process that does not require the court to take a substantive position on the content of the law.

The codification argument also has a strategic advantage: it creates pressure for comprehensive reform rather than piecemeal change. A court order requiring codification would compel the legislature to engage comprehensively with Hindu personal law, addressing not just the specific issues raised in individual cases but the entire legal framework. The process of codification inevitably requires decisions about which existing rules to preserve, which to modify, and which to abolish, and these decisions create opportunities for the kind of comprehensive reform advocated throughout this treatise.

CHAPTER THIRTY-SIX: ANTICIPATED OBJECTIONS AND JUDICIAL COUNTERARGUMENTS

36.1 The Religious Freedom Objection

The most frequently raised and most superficially powerful objection to constitutional challenges to Hindu personal law rules is the argument from religious freedom. Article 41 of the Constitution guarantees the right to profess, practice, and propagate religion, and Article 41(2) guarantees every religious community or denomination the right to manage its religious institutions. The argument from these provisions is that Hindu personal law is an expression of the Hindu religious tradition, that applying constitutional equality standards to override religious personal law rules violates the religious freedom of the Hindu community, and that the court should therefore decline to intervene.

This argument must be met with a multi-layered response. At the most fundamental level, the argument confuses the sphere of genuinely religious practice with the sphere of legally enforced property rights and family arrangements. Religious freedom protects the right of individuals and communities to follow their religious beliefs in matters of belief, worship, ceremony, and institutional organization. It does not protect the right to have the state's judicial machinery

enforce property rules that systematically discriminate on grounds of sex. When a Hindu family observes a religious ceremony in accordance with Dayabhaga tradition, that is protected religious practice. When the state courts apply a rule that denies a Hindu daughter equal inheritance rights, that is state action, not private religious practice, and it is subject to constitutional equality standards.

At a second level, the argument from religious freedom imposes a static and homogeneous conception of the Hindu community and its religious practices that is both empirically inaccurate and normatively unjustified. The Hindu community in Bangladesh, like Hindu communities everywhere, is internally diverse. Many Hindu individuals and families do not regard the discriminatory inheritance rules, the absence of divorce, or the male-preference in adoption as genuinely religious requirements. Many progressive Hindu scholars and religious leaders have argued explicitly that the Dharmasastra tradition, properly understood, supports rather than resists gender equality. The argument that protecting religious freedom for the Hindu community requires preserving discriminatory personal law rules treats the most conservative interpretation of the tradition as the only legitimate one and denies the religious freedom of those members of the community who interpret their tradition differently.

At a third level, the argument from religious freedom must confront the jurisprudence of constitutional courts across the world, which has uniformly rejected the proposition that religious freedom provides an absolute shield for discriminatory personal law rules. The South African Constitutional Court in Bhe, the Indian Supreme Court in a series of personal law cases, the Canadian Supreme Court in the Hutterian Brethren of Wilson Colony case, and multiple decisions of the European Court of Human Rights have all recognized that religious freedom is a qualified right that must be balanced against other constitutional values including equality and dignity, and that where religious practices produce systematic discrimination, the state is not constitutionally required, and in many circumstances not constitutionally permitted, to enforce that discrimination through its legal machinery.

36.2 The Separation of Powers Objection

A second major objection to the litigation strategy proposed in this Part is the separation of powers objection: that reforming personal law is a legislative function, that the legislature is the appropriate body to make the policy choices involved in such reform, and that the court exceeds its constitutional role when it issues orders requiring or directing legislative action in the personal law field.

This objection has more force than the religious freedom objection, because it invokes genuine institutional values about the appropriate division of authority in a democratic constitutional order. The response to it, however, is well established in constitutional theory and in the practice of constitutional courts worldwide. The separation of powers objection fails as an absolute bar to judicial intervention in the personal law field for the following reasons.

First, the court is not being asked to make legislative policy choices. It is being asked to enforce constitutional rights that the legislature has violated through its inaction. The distinction between

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judicial enforcement of constitutional rights and judicial law-making is fundamental to the theory of constitutional review. When the court orders the legislature to reform discriminatory Hindu personal law, it is not telling the legislature what specific rules to adopt. It is telling the legislature that the existing rules violate the Constitution and that the legislature must, within its policy discretion, enact rules that do not. The legislature retains full authority over the content of the reform legislation. The court merely establishes the constitutional parameters within which that legislation must operate.

Second, the separation of powers argument proves too much. If courts cannot intervene to require legislative action to remedy constitutional violations in the personal law field, then constitutional rights are effectively unenforceable whenever the legislature chooses to ignore them. This would reduce fundamental rights to mere aspirations and would undermine the entire architecture of constitutional review. Constitutional rights must be enforceable, or they are not rights at all. The justiciability of constitutional rights implies the enforceability of those rights even against legislative inaction.

Third, and most importantly in the context of Bangladesh's post-Charter constitutional moment, the July Charter's own framework explicitly commits the new government to the implementation of a comprehensive set of reforms within a constitutionally prescribed period. The Charter's mandate for reform, democratically endorsed by the referendum, means that judicial orders requiring legislative action on Hindu personal law reform are now aligned with, not contrary to, the democratic will. The separation of powers objection loses much of its force when the judicial order merely enforces what the democratic constitutional order has already demanded.

36.3 The Mootness and Institutional Competence Objections

A third category of objection is procedural rather than substantive: the argument that specific cases are moot, that the court lacks the institutional competence to address the complex policy questions involved in personal law reform, or that alternative remedies exist that the petitioners have not exhausted.

The mootness objection can arise in individual cases where the specific situation of the litigant has changed between the filing of the application and the hearing, making the specific relief sought no longer necessary or appropriate. This objection is best addressed through careful case selection: choosing vehicles where the facts are stable and the need for relief is continuing, and framing the application in terms of a declaration of constitutional principle rather than merely of individual relief, so that the case does not become moot merely because the individual petitioner's situation changes.

The institutional competence objection reflects a genuine concern but should not be exaggerated. Courts are not asked to draft personal law codes. They are asked to declare whether existing rules are consistent with the Constitution and, if not, to identify the constitutional requirements that reform legislation must meet. This is a function that courts regularly exercise in constitutional jurisdictions worldwide, and it does not require the kind of specialized knowledge of personal law drafting that the objection implicitly assumes.

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The exhaustion of remedies objection is typically addressed by demonstrating that the petitioner has sought relief through available legislative channels without success. In the context of Hindu personal law reform in Bangladesh, where the legislative inaction has continued for more than fifty years despite numerous recommendations from law commissions, academic scholars, and civil society organizations, the exhaustion requirement is easily satisfied.

36.4 The Practical Enforcement Objection

A fourth and particularly important objection to the litigation strategy proposed in this Part is what might be called the practical enforcement objection: even if the court issues orders declaring discriminatory Hindu personal law rules unconstitutional or directing the legislature to reform those rules, how can those orders be effectively enforced if the legislature chooses not to comply?

This is a serious objection that raises fundamental questions about the relationship between judicial authority and democratic politics in a constitutional system. Constitutional courts in several countries have grappled with the problem of non-compliance with their orders, and the experience is mixed. In some cases, strong judicial orders backed by clear constitutional authority and broad public legitimacy have succeeded in compelling legislative action even by reluctant legislatures. In other cases, courts have found their orders ignored or circumvented, and their authority has been diminished rather than enhanced by the confrontation.

The most effective response to the practical enforcement objection is not to minimize the risk of non-compliance but to argue that the risk is manageable in the specific context of Bangladesh's post-Charter constitutional order. The new government that emerged from the February 2026 elections has a democratic mandate, derived from the referendum endorsement of the July Charter, to implement a comprehensive package of constitutional and legal reforms within a prescribed period. A judicial order requiring the reform of Hindu personal law would be aligned with this mandate and would therefore be subject to a different political dynamic than a judicial order that ran counter to the government's electoral commitments. The political cost of non-compliance with a judicial order on personal law reform would be high in a government that has staked its legitimacy on the implementation of constitutional reform, and the reputational benefits of compliance, both domestically and internationally, would be significant.

CHAPTER THIRTY-SEVEN: THE INTERNATIONAL HUMAN RIGHTS DIMENSION OF CONSTITUTIONAL LITIGATION

37.1 CEDAW and Its Domestic Constitutional Implications

The Convention on the Elimination of All Forms of Discrimination Against Women is the most directly relevant international instrument for the constitutional litigation strategy proposed in this treatise, and its implications for that strategy deserve careful and detailed analysis. CEDAW, which Bangladesh ratified in 1984, imposes comprehensive obligations on states parties to

eliminate discrimination against women in all areas of life, including the domain of family law and property rights that is the focus of the present litigation strategy.

Article 15 of CEDAW requires states parties to accord to women equality with men before the law and in civil matters, and to ensure that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void. Article 16 of CEDAW requires states parties to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations, including the right to enter into marriage only with free and full consent, the same rights and responsibilities during marriage and at its dissolution, the same rights and responsibilities as parents, and the same personal rights as husband and wife including the right to choose a family name.

Bangladesh's reservation to CEDAW Article 2, under which it undertook to implement the convention's anti-discrimination provisions only insofar as they do not conflict with Islamic Shariah law, has been the subject of controversy. The reservation is ambiguous: it does not explicitly exclude Hindu personal law from CEDAW's scope, and there is a strong argument that the reservation, being directed at Islamic Shariah law, does not provide any basis for maintaining discriminatory Hindu personal law rules in violation of CEDAW. The CEDAW Committee has consistently taken the position that the Bangladesh reservation is incompatible with the object and purpose of the convention and has repeatedly called on Bangladesh to withdraw it.

More importantly for constitutional litigation purposes, the CEDAW reservation relates to state policy regarding Islamic law and has no direct application to the constitutional rights of Hindu women. The argument that Bangladesh's CEDAW obligations require the reform of Hindu personal law is not defeated by the reservation concerning Islamic law, and a constitutional litigant can properly invoke CEDAW standards in support of her constitutional argument without being met by the Islamic law reservation as a response.

The specific CEDAW standards that are most directly relevant to the constitutional challenges discussed in this Part are the Committee's Concluding Observations on Bangladesh, which have repeatedly identified the failure to reform Hindu personal law as a violation of Bangladesh's CEDAW obligations. The Committee's recommendations provide a concrete and authoritative articulation of what equal family law for Hindu women should look like, and these recommendations can be cited in constitutional litigation as evidence of the international standard against which Bangladesh's performance is to be measured.

The procedural mechanism for integrating CEDAW standards into domestic constitutional litigation is the well-established interpretive principle that domestic courts should, where possible, interpret constitutional rights provisions in a manner consistent with the state's international human rights obligations. This principle, adopted by courts in India, South Africa, Canada, and many other jurisdictions, allows constitutional litigants to invoke CEDAW standards as interpretive guides to the meaning of constitutional equality and dignity provisions without requiring the court to treat CEDAW as directly binding domestic law.

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37.2 The ICCPR, ICESCR, and the Universal Periodic Review Process

The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both ratified by Bangladesh, provide additional international human rights standards directly relevant to the constitutional litigation strategy. The ICCPR's Article 26, which guarantees equal and effective protection against discrimination on grounds of sex among other grounds, and its Article 17, which protects the right to privacy and family life against arbitrary interference, both have implications for the discriminatory Hindu personal law rules discussed in this Part.

The Human Rights Committee, monitoring Bangladesh's compliance with the ICCPR, has in its concluding observations called attention to the situation of Hindu women and the need for reform of discriminatory personal law rules. These observations, while not legally binding in the sense of creating enforceable domestic legal obligations, are authoritative interpretations of the ICCPR standards by the treaty body specifically charged with that task, and they carry significant weight in constitutional argument.

The Universal Periodic Review process of the UN Human Rights Council has also produced recommendations specifically directed at the reform of Hindu personal law in Bangladesh. Multiple states participating in Bangladesh's Universal Periodic Reviews have recommended that Bangladesh reform its personal law applicable to Hindu women to ensure equality in inheritance, marriage, and family matters. Bangladesh has accepted some of these recommendations, at least in principle, and the constitutional litigant can point to these formal acceptances as evidence that the government has itself acknowledged the need for reform, making its continued failure to implement that reform all the more constitutionally problematic.

37.3 The SDGs and the Human Rights-Based Approach to Development

A dimension of the international framework that has become increasingly relevant to constitutional litigation in the area of gender equality since around 2015 is the Sustainable Development Goal framework, specifically SDG 5 on gender equality and SDG 16 on peace, justice, and strong institutions. While the SDGs are not legally binding in the way that treaty obligations are, they represent a global political commitment to specific outcomes including legal equality for women that governments, including Bangladesh's, have endorsed through their participation in the SDG process.

The human rights-based approach to development, which integrates international human rights standards into development planning and programming, provides an additional framework within which the constitutional argument for Hindu personal law reform can be situated. The argument that the reform of Hindu personal law is not merely a matter of religious community concern but a development imperative, necessary for Bangladesh to fulfill its international commitments on gender equality and to achieve the SDGs to which it has committed, gives the reform argument a practical economic dimension that may be persuasive to courts and legislators who are primarily motivated by development rather than by rights discourse.

The economic argument for personal law reform deserves particular attention in the context of constitutional litigation because it speaks to a form of harm that courts may find more tractable than the philosophical arguments about dignity and autonomy that dominate the rights-based discourse. Economic research, including recent work published in the International Journal of Research and Innovation in Social Science examining inherited inequality and the limited property rights of Hindu women in Bangladesh, consistently demonstrates that the denial of property rights to women reduces household investment in education, health, and economic productivity. The argument that discriminatory Hindu personal law rules impose an economic cost on the country as a whole, not just on the women who are their most direct victims, frames the constitutional challenge in terms that may resonate with a broader audience and may be useful in building the political and judicial support necessary for the success of the litigation strategy.

CHAPTER THIRTY-EIGHT: SYNTHESIS: THE COMPLETE LITIGATION STRATEGY AND ITS RELATIONSHIP TO THE LEGISLATIVE PATHWAY

38.1 The Sequencing of Constitutional Litigation: A Strategic Framework

A strategic litigation campaign for Hindu personal law reform in Bangladesh should not be conceived as a single case or a single application but as a coordinated series of cases, applications, and advocacy efforts, carefully sequenced to build judicial precedent, maintain public attention, and create the maximum pressure for legislative action. The sequencing of this campaign is as important as the content of any individual case, and it requires careful thought about which arguments to advance first, which vehicles to use at what stage, and how to integrate the judicial and legislative pathways most effectively.

The first phase of the litigation campaign should be devoted to building the doctrinal foundation through cases that raise the most straightforward constitutional arguments in the most sympathetic factual contexts. The inheritance cases, specifically challenges to the male-preference rule in succession to self-acquired property, are the ideal first-phase vehicles. These cases raise the clearest constitutional arguments, have the most developed comparative support from both Indian and international jurisprudence, and involve the most immediately compelling factual situations. A carefully selected and well-argued inheritance challenge, supported by strong amicus submissions and the evidence necessary to demonstrate the human impact of the discriminatory rules, has the best prospect of producing an early judicial success that builds momentum for subsequent litigation.

The second phase should address the marriage and divorce question, using carefully selected vehicles, including in all likelihood PIL applications on behalf of groups of Hindu women who have been trapped in abandoned or abusive marriages, to present to the court the full human reality of the absence of any divorce remedy. Second-phase litigation should draw on the doctrine established in the first phase and build on it to argue that the same constitutional

principles that require equal inheritance rights require the provision of a civil mechanism for marriage dissolution.

The third phase should pursue the codification case, using the precedents established in the first two phases to argue that the overall failure to codify Hindu personal law is itself a constitutional violation, and seeking a comprehensive order directing the legislature to enact a complete Hindu Personal Law Code within a specified period.

Throughout all three phases, the litigation campaign should be integrated with a coordinated advocacy strategy that maintains public attention on the issues, builds community support within the Hindu community for the reforms being sought, engages the media and civil society in ways that create a supportive environment for judicial and legislative action, and maintains pressure on the legislature to take voluntary action rather than waiting for judicial orders.

38.2 The Relationship Between Judicial and Legislative Reform: Complementary Pathways

One of the central themes of this treatise is that judicial and legislative reform are complementary rather than competing pathways to Hindu personal law reform. The argument for this complementarity is worth stating explicitly in the synthesis that this chapter provides.

Legislative reform, pursued through the parliamentary process, has the advantage of comprehensive democratic legitimacy. A Hindu Personal Law Code enacted by the Bangladesh Parliament would represent the considered judgment of the democratic community, expressed through the constitutionally mandated process of deliberation and enactment. It would apply uniformly across the country, provide clear and accessible rules in Bangla, and create a foundation for the consistent judicial application of reformed personal law that individual case-by-case judicial decisions cannot provide.

Judicial reform, pursued through constitutional litigation, has the advantage of speed, focus, and enforceability. An individual case that reaches the Supreme Court can produce a binding constitutional ruling within months or years, compared to the years or decades that legislative reform may take in a politically complex environment. Constitutional litigation can also target specific discriminatory rules with a precision that legislative advocacy cannot always achieve, and can create binding legal precedents that constrain both the legislature and the executive in ways that political advocacy alone cannot.

The interaction between these two pathways is not merely additive but synergistic. Judicial decisions in constitutional cases create precedents that both compel and facilitate legislative action: they establish the constitutional principles within which reform legislation must operate, they demonstrate to legislators that the status quo is legally unsustainable, and they shift the burden of proof in political debate from the reformers to the defenders of the discriminatory rules. Legislative action, in turn, provides the comprehensive framework within which judicial decisions in individual cases can be given their fullest effect: a Hindu Personal Law Code that has been enacted by the legislature gives the courts a clear statutory basis for decision-making

that reduces reliance on the ancient texts and colonial precedents that currently govern Hindu personal law cases.

The post-Charter constitutional moment in Bangladesh provides an unusually favorable environment for the simultaneous pursuit of both pathways. The new parliament's mandate to implement the July Charter's reform agenda within a constitutionally prescribed period creates both a political impetus for legislative action and a constitutional framework within which judicial orders requiring legislative action would be seen as supportive of rather than contrary to the democratic mandate. A coordinated strategy that advances both the legislative and judicial pathways simultaneously, using progress in each to support and accelerate progress in the other, is the approach that offers the greatest prospect of achieving comprehensive reform in the shortest possible time.

38.3 The Role of Legal Academia and Civil Society in Litigation Strategy

Constitutional litigation does not occur in a vacuum. It is embedded in a social and intellectual environment that shapes both the quality of the arguments advanced and the receptivity of courts to those arguments. The role of legal academia and civil society organizations in supporting and informing the litigation strategy proposed in this Part is therefore not peripheral but central.

Legal scholars, particularly those with expertise in Hindu law, constitutional law, and comparative personal law, have an essential role to play in developing the doctrinal arguments, identifying the most promising constitutional provisions and interpretive approaches, writing the amicus submissions that assist the court, and producing the scholarly literature that gives constitutional arguments their intellectual foundations. The extensive and growing academic literature on Hindu personal law reform in Bangladesh, including work published in 2024, 2025, and 2026, provides the doctrinal resources that constitutional litigants need to argue their cases effectively.

Civil society organizations, particularly those with direct experience of working with Hindu women who have been victimized by discriminatory personal law rules, have an equally essential role: identifying the cases that best illustrate the human consequences of the discriminatory rules, supporting individual litigants through the litigation process, maintaining public attention on the issues, and ensuring that the voices of those most affected by the discrimination are heard in both judicial and legislative proceedings. Organizations like Ain O Shalish Kendra, Bangladesh Mahila Parishad, and the Bangladesh Hindu Buddhist Christian Unity Council have historically played important roles in advocacy for personal law reform, and their involvement in a coordinated litigation strategy would significantly strengthen its prospects.

The media also has a role to play. Strategic constitutional litigation is most effective when it is publicly visible, when the human stories behind the legal arguments are known and understood, and when the outcomes of cases are reported in ways that build public understanding of the issues. A media strategy that makes the personal consequences of discriminatory Hindu personal law vivid and understandable to a broad audience, that explains the constitutional arguments in

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accessible language, and that maintains public attention through the often long and complex process of constitutional litigation, is an important complement to the legal strategy.

38.4 Anticipating the Post-Litigation Constitutional Landscape

A complete litigation strategy must also anticipate the constitutional landscape that will exist after the key cases have been decided. The purpose of constitutional litigation in this field is not merely to win individual cases but to reshape the legal and constitutional environment in ways that make the full reform of Hindu personal law possible and sustainable. This requires thinking beyond the immediate outcome of any particular case to the longer-term constitutional implications of the precedents established.

If the Bangladesh Supreme Court issues a ruling in the first-phase inheritance cases that holds specific discriminatory inheritance rules unconstitutional under Articles 27 and 28, this ruling will have implications that extend far beyond inheritance. It will establish the principle that personal law rules are subject to constitutional equality standards, that Article 28(1)'s prohibition on sex discrimination applies to rules enforced through state courts even when those rules derive from religious traditions, and that the constitutional order does not permit the state to enforce discriminatory personal law merely because that law has religious authority in the community to which it applies. These principles, once established, will have far-reaching implications for all subsequent personal law cases, both Hindu and potentially other communities, and will create the constitutional foundation for a comprehensive legislative reform of the kind proposed in Part Twelve of this treatise.

If, conversely, the court declines to apply constitutional equality standards to personal law rules, taking refuge in the religious freedom argument, the result is not necessarily a strategic defeat. A ruling that declines to apply constitutional equality to personal law is itself a constitutional statement that can be appealed, criticized, subjected to scholarly analysis, and ultimately reversed in a subsequent case or through constitutional amendment. The experience of Indian constitutional jurisprudence on personal law, which has oscillated between periods of activism and periods of restraint, demonstrates that judicial positions are not permanent and that sustained advocacy, both in the courts and outside them, can ultimately shift the constitutional consensus.

The most important post-litigation constitutional development to anticipate is the enactment of the Hindu Personal Law Code proposed in Part Twelve of this treatise. Constitutional litigation, pursued through the strategy described in this Part, can create both the legal precedents and the political pressure necessary to make that legislative enactment possible. But the litigation strategy should be designed from the beginning with the legislative outcome in mind, shaping the constitutional principles that will govern the code, establishing the equality standards that the code must meet, and creating the judicial precedents that will guide its interpretation and application once enacted.

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CHAPTER THIRTY-NINE: SPECIFIC CASE STUDIES IN STRATEGIC LITIGATION FROM COMPARATIVE SYSTEMS

39.1 The Vineeta Sharma Litigation and its Lessons for Bangladesh

The litigation that produced the landmark ruling of the Supreme Court of India in Vineeta Sharma versus Rakesh Sharma, decided in August 2020 by a three-judge bench and reported at (2020) 9 SCC 1, is perhaps the single most instructive case study for a Bangladeshi litigation strategy in the Hindu personal law field. The case arose from the question of whether the 2005 amendment to the Hindu Succession Act of India, which granted daughters equal coparcenary rights with sons in the ancestral joint family property, applied retroactively to daughters whose fathers had died before the amendment came into force.

The litigation history of the Vineeta Sharma case spans more than fifteen years and reflects the complex interplay of judicial decision-making, legislative amendment, and advocacy that characterizes reform litigation in this field. The question of the retroactivity of the 2005 amendment had produced conflicting decisions in different High Courts across India, creating a situation of legal uncertainty that affected millions of families. The Supreme Court's decision to constitute a three-judge bench to resolve the conflict and to give it a definitive answer indicated the court's recognition of the importance of the issue and its willingness to engage with the question rather than avoiding it.

The decision in Vineeta Sharma is significant for the Bangladeshi context in several specific ways. First, it demonstrates that constitutional courts can and do address retroactive equality questions in the personal law field, finding that the right to equal inheritance is not merely a prospective aspiration but a right that must be given its fullest possible effect, including through the most expansive possible interpretation of the temporal scope of reform legislation. Second, it demonstrates that a court can engage in a rich and sophisticated analysis of Hindu legal tradition, drawing on the Dharmasastra texts, the colonial jurisprudence, and the constitutional principles of equality and dignity, to reach a conclusion that advances gender equality within the tradition rather than simply imposing external standards upon it. Third, it demonstrates the importance of the court's composition and the significance of the choice of judges for the outcome of reform litigation: the three-judge bench that decided Vineeta Sharma was composed of judges with a strong commitment to constitutional equality principles, and this commitment shaped both the outcome and the reasoning of the decision.

The Bangladesh counterpart to Vineeta Sharma is the Shishubar Dhali decision of 2023, which we have discussed throughout this treatise. The Shishubar Dhali case, involving the inheritance of Stridhan by daughters and granddaughters, reflects a similarly sophisticated engagement with the Dayabhaga tradition and the constitutional equality principles applicable to it. The decision is a foundation stone on which a more comprehensive litigation strategy can be built.

The lesson from Vineeta Sharma for the sequencing of a Bangladeshi litigation strategy is that the most powerful constitutional decisions in this field often come from the resolution of genuine legal uncertainty: cases where different courts have reached different conclusions on the same

question, or where a principle established in one context needs to be extended and applied consistently across related contexts. The litigation strategy should be designed to create the conditions for such resolution by raising the same constitutional arguments in multiple courts and in multiple factual contexts, building a record of judicial engagement that ultimately requires the Supreme Court to intervene to provide a definitive constitutional ruling.

39.2 The Bhe Litigation in South Africa and the Transformative Constitutional Method

The litigation that produced the Constitutional Court's ruling in Bhe versus Magistrate, Khayelitsha, decided in 2004, is the most important comparative precedent for a PIL challenge to discriminatory succession rules in a personal law context. The case arose from the application of the rule of male primogeniture in the Black Administration Act and the customary law of succession, which provided that a woman could not be an heir under customary law and that daughters could not inherit from their fathers in the customary law tradition.

The Constitutional Court's ruling in Bhe is remarkable for its breadth, its philosophical depth, and its directness. Justice Langa, writing for the majority, engaged in an extensive analysis of the constitutional values of equality and dignity, the nature of customary law as a legal system, and the relationship between constitutional rights and cultural or traditional practices. The court found unambiguously that the rule of male primogeniture violated the constitutional rights of women and children, that the violation could not be justified by reference to cultural tradition or religious practice, and that the customary law of succession as embodied in the Black Administration Act was accordingly unconstitutional.

The remedy the court ordered in Bhe is particularly instructive. Rather than simply declaring the discriminatory rule invalid and leaving a legal vacuum, the court suspended the declaration of invalidity, read in provisions from the Intestate Succession Act as an interim remedy, and directed the government to introduce legislation to reform the law of succession on a basis consistent with the Constitution. This remedy neatly addresses the tension between judicial activism and legislative authority: the court both declares the constitutional standard and provides an interim remedy, while preserving the legislature's authority to enact the permanent solution within the constitutional parameters established by the court's ruling.

The Bhe methodology is directly applicable to a Bangladeshi litigation strategy challenging discriminatory Hindu personal law rules. The court should be asked to find that the discriminatory inheritance rules violate the constitutional equality provisions, to provide an interim remedy that applies the most rights-compatible interpretation of the available rules pending legislative reform, and to direct the legislature to enact reform legislation within a specified period. This approach uses the full range of the court's remedial powers without claiming authority to legislate, respects the legislature's role while enforcing the constitutional standard, and creates clear and specific pressure for legislative action.

39.3 The Nepal Supreme Court's Orders on Personal Law Reform

The Nepal Supreme Court's series of orders on personal law reform, issued between 2007 and 2015, represents the most direct precedent for the use of PIL orders to require legislative action on personal law reform. In a series of cases brought by human rights organizations, the Nepal Supreme Court issued orders, known as mandamus-type orders in Nepal's procedural terminology, requiring the legislature to reform specific personal law rules that violated constitutional equality principles. These orders played a direct role in shaping the drafting and enactment of the National Civil Code of 2017, which represents Nepal's most comprehensive reform of personal law.

The Nepal precedent is relevant to Bangladesh for several reasons. Nepal and Bangladesh share important similarities: both are South Asian states with large Hindu minority populations (or in Nepal's case, a majority Hindu population), both have constitutional equality guarantees that are directly applicable to personal law, and both have a tradition of PIL litigation as a vehicle for constitutional rights enforcement. The Nepal Supreme Court's orders demonstrate that South Asian constitutional courts are willing to use PIL proceedings to require legislative action on personal law reform, that such orders can be effective in driving legislative change, and that the technique of ordering legislative action within a specified period is a legitimate and practically useful remedial tool in this field.

The specific orders issued by the Nepal Supreme Court included requirements to eliminate the preferential treatment of sons over daughters in inheritance, to abolish provisions permitting polygamy, to ensure equal property rights for women in joint family property, and to provide for equal rights in marriage and divorce. These orders, issued in the context of Nepal's constitutional transition and accompanied by sustained civil society advocacy, ultimately produced a parliamentary response in the form of the National Civil Code, demonstrating that judicial orders can be effective catalysts for legislative reform even in politically complex environments.

The Bangladesh counterpart to the Nepal experience may be in the making. The post-Charter constitutional moment, with its explicit commitment to reform and its democratic mandate for comprehensive constitutional change, provides a more favorable political environment for the effectiveness of judicial orders than has existed at any previous point in Bangladesh's post-independence history. The new BNP-led government, with its constitutional mandate to implement the July Charter's reform agenda, would face a particularly high political cost if it were to resist a Supreme Court order requiring the introduction of Hindu personal law reform legislation, since such resistance would be directly contrary both to the constitutional mandate of the Charter and to the specific reform commitments that the BNP endorsed in the Charter process.

CHAPTER FORTY: THE LANDMARK SHISHUBAR DHALI DECISION AND ITS IMPLICATIONS FOR FUTURE LITIGATION

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40.1 The Decision as Precedent and as Template

The decision of the Appellate Division of the Bangladesh Supreme Court in Shishubar Dhali and Others versus Chitta Ranjan Mondol and Others, reported at 18 SCOB [2023] AD 20, deserves the most careful and detailed analysis of any judicial decision in this treatise, because it is both the most significant precedent in Bangladesh's Hindu personal law jurisprudence and the most instructive template for future litigation strategy. In this chapter we examine the decision in its legal, jurisprudential, and strategic dimensions.

The facts of Shishubar Dhali arose from a dispute about the inheritance of property that had belonged to a deceased Hindu woman, which was claimed both by her daughters and by more distant male relatives. The central legal question was whether the daughters' daughters, that is the granddaughters of the deceased woman, could inherit their grandmother's Stridhan property, or whether it passed instead to other relatives under the Dayabhaga rules of succession. The significance of the question lay in its implication for the broader principle of gender equality in the Dayabhaga system: if granddaughters could inherit from grandmothers, the argument for giving daughters equal rights to inherit from fathers would be significantly strengthened.

The Appellate Division, in the opinion that established the precedent, held that daughters and sons inherit their mother's Stridhan equally and absolutely under the Dayabhaga tradition, and that this equality extends to the daughters' daughters in the relevant circumstances. The court's reasoning drew on the primary text of the Dayabhaga, Jimuta Vahana's foundational treatise, and found that the textual tradition supported equal inheritance for daughters of Stridhan property. The court explicitly rejected the argument that male relatives had a preferential claim and affirmed the constitutional principle of gender equality as applicable to the interpretation of Hindu personal law rules.

The Shishubar Dhali decision is significant for future litigation strategy in at least four distinct ways. First, it establishes that the Appellate Division is willing to engage substantively with Hindu personal law questions from a constitutional equality perspective, and that it does not regard religious personal law as exempt from constitutional scrutiny. This is the most important jurisprudential signal the court has given in the Hindu personal law field since independence. Second, it demonstrates that the Dayabhaga tradition, properly understood, supports rather than resists gender equality in inheritance, which undercuts the argument that reform of discriminatory inheritance rules would be contrary to the religious tradition. Third, it provides a clear precedent for the proposition that daughters have equal inheritance rights in Stridhan property, which can serve as the foundation for the next step in the litigation: an argument that daughters should have equal rights in all forms of property, not just Stridhan. Fourth, it demonstrates the utility of arguments that engage with the Dayabhaga textual tradition itself rather than simply invoking constitutional principles from outside the tradition, suggesting that future litigants should invest in the kind of scholarly engagement with the primary sources that the Shishubar Dhali litigation appears to have involved.

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40.2 Building on Shishubar Dhali: The Next Case

The logical next case in the development of a litigation strategy that builds on Shishubar Dhali is a challenge to the broader principle of male preference in the inheritance of property that is not Stridhan, specifically the self-acquired or ancestral property of a deceased Hindu man. Shishubar Dhali established equal inheritance rights for daughters in their mother's Stridhan. The next litigation should argue that the same constitutional principle of equality requires equal inheritance rights for daughters in their father's property.

This next case should be framed both as an extension of the Shishubar Dhali principle and as an independent constitutional challenge. The extension argument is that if daughters and sons inherit their mother's property equally, the constitutional principle of equality that the Shishubar Dhali court affirmed cannot consistently be applied to give daughters inferior rights in their father's property. The constitutional argument is that the distinction between Stridhan and other property for purposes of daughters' inheritance rights is a distinction that cannot be justified under the equality provisions of the Constitution, since in both cases the discrimination is on grounds of sex.

The case should also engage explicitly with the comparative jurisprudence: with the Vineeta Sharma decision establishing equal coparcenary rights for daughters in India, with the Bhe decision establishing equal succession rights under customary law in South Africa, and with the growing body of international human rights standards requiring equal inheritance rights for women. This comparative engagement serves two purposes: it demonstrates to the court that the constitutional argument for equal inheritance is supported by the most authoritative comparative sources, and it creates a normative standard against which the court's decision will be measured both domestically and internationally.

The advocacy supporting this case should be coordinated with the legislative reform effort described in Part Twelve of this treatise. The filing of a major constitutional challenge to the male-preference inheritance rule, supported by strong scholarly and civil society advocacy, would create a powerful political pressure for legislative action that would be most effectively deployed as part of a coordinated strategy in which the legislative and judicial pathways advance simultaneously.

40.3 The Question of Retrospectivity in Post-Reform Litigation

One of the most practically important questions that will arise in post-reform litigation, whether the reform is achieved through judicial decision or through legislation, is the question of retrospectivity: does the reformed rule apply to situations that arose before the reform, and if so, how far back does it reach?

The Vineeta Sharma case in India addressed this question in the context of the 2005 Hindu Succession Act amendment, holding that the amendment applied to all living daughters as of the date of the amendment, regardless of when their fathers had died, as long as the specific property dispute had not been finally determined by a court. The reasoning was that the daughter's right to

equal coparcenary membership was not merely a succession right that crystallized at death but a living right that existed by reason of birth and could be enforced at any time during the daughter's lifetime.

The analogous question in Bangladesh, following a successful constitutional challenge or legislative reform of inheritance rules, would be how to handle existing property disputes in which the discriminatory rules have already been applied by courts of first instance or have governed the actual distribution of property. The answer to this question is not straightforward, and the litigation strategy should include careful thought about how to frame the retrospectivity argument.

The strongest argument for retrospective application of a constitutional ruling is that constitutional rights are not created by judicial decisions but merely declared by them: if the discriminatory inheritance rule has always been inconsistent with Article 28(1), then it has never been validly applied, and those who were denied inheritance rights under it have had a right of recovery from the moment the wrong was done. The strongest argument against full retrospective application is that it would disrupt settled expectations and property arrangements in ways that would create enormous practical difficulties and potentially deprive innocent third parties of property they have acquired in good faith.

The most legally and practically defensible approach is the one adopted in Vineeta Sharma: prospective application from the date of the judicial decision or legislative reform, with retrospective application to pending cases in which rights have not yet been finally determined. This approach respects the constitutional principle that the discriminatory rules were always invalid while accommodating the legitimate concerns about disruption of settled arrangements that full retrospectivity would create.

CHAPTER FORTY-ONE: THE BROADER CONSTITUTIONAL JURISPRUDENCE AND THE FUTURE OF PERSONAL LAW IN BANGLADESH

41.1 Transformative Constitutionalism and the Post-Charter Era

The theory of transformative constitutionalism, which we have invoked throughout this treatise as the appropriate framework for understanding both the constitutional dimensions of Hindu personal law reform and the role of courts in driving that reform, takes on a new and concrete meaning in the post-Charter constitutional order of Bangladesh. The July Charter of 2025, endorsed by the February 2026 referendum, is itself a transformative constitutional document: it represents the aspiration of the Bangladeshi democratic community to a constitutional order that is not merely protective of existing rights but actively committed to fundamental social transformation.

The transformative character of the Charter is most clearly expressed in its recognition of Bangladesh as a nation of multiple ethnicities, religions, languages, and cultures and its

commitment to the proper dignity of all communities. This provision, read in the context of the broader reform agenda of the Charter, is not merely a statement of constitutional aspiration. It is a commitment that carries concrete legal implications for the situation of religious minorities including the Hindu community, and for the laws that govern their personal affairs.

A transformative constitutional order, as Klare and his successors have argued, imposes affirmative obligations on all organs of the state, including courts, to use their constitutional powers actively in the service of transformation. A court operating under a transformative constitution is not merely a passive enforcer of pre-existing rights but an active participant in the ongoing project of constitutional transformation. This means that courts should interpret constitutional rights provisions expansively, giving them the fullest possible scope to address the conditions that produce rights violations. It means that courts should be willing to issue broad and creative remedial orders that address the structural causes of rights violations rather than merely their symptomatic manifestations. And it means that courts should regard the failure of the legislature to implement the transformative agenda of the Constitution as itself a constitutional matter requiring judicial attention.

Applied to Hindu personal law in Bangladesh, transformative constitutionalism argues that the courts are not merely empowered but obligated to insist on the constitutional reform of discriminatory personal law rules. The failure of the legislature to reform those rules over more than fifty years is not merely a policy failure. It is a failure of constitutional compliance that has gone unaddressed for far too long. The post-Charter moment, with its democratic mandate for transformation and its explicit commitment to the dignity of all communities, is the moment for the courts to step into their proper role as participants in the constitutional transformation that the democratic order has demanded.

41.2 The Question of a Uniform Civil Code: Comparative Lessons and Bangladesh's Future

The debate over a Uniform Civil Code in India, which has been revived with particular intensity since the BJP government's push for UCC implementation and the enactment of the Uttarakhand Uniform Civil Code in 2024, provides important context for thinking about the future of personal law in Bangladesh. The Indian UCC debate, which pits arguments for legal uniformity and gender equality against arguments for religious freedom and cultural diversity, illuminates the tensions that any personal law reform agenda must navigate.

The Uttarakhand Uniform Civil Code, enacted in March 2024 and applicable from January 2025, represents the first serious legislative implementation of the UCC concept in independent India. The code establishes uniform rules governing marriage, divorce, inheritance, and adoption applicable to all citizens of Uttarakhand regardless of religion, with certain specific exceptions for tribal communities. The code has been celebrated by its proponents as a significant advance for gender equality and legal certainty, and criticized by its opponents as an imposition of Hindu legal norms on non-Hindu communities under the guise of uniformity.

The Uttarakhand UCC is relevant to Bangladesh in two ways. First, it provides a concrete legislative model for what a uniform civil code can look like in a South Asian legal system,

including both its content and its structure. Second, the debate it has provoked in India, particularly about the risk that a nominally uniform code may in practice impose the norms of one religious tradition on others, is a cautionary tale for Bangladesh reform advocates who might be tempted to propose a similar approach.

The proposal in this treatise is not for a uniform civil code applicable to all communities in Bangladesh, which would raise precisely the concerns about majority imposition that the Uttarakhand debate has illuminated. It is for the reform of Hindu personal law specifically, through a code that is rooted in the Dayabhaga tradition, informed by constitutional equality principles, and designed specifically for the Hindu community of Bangladesh. This community-specific reform approach respects the diversity of Bangladesh's legal landscape while insisting that within each community's personal law, the constitutional standards of equality and dignity must be honored.

41.3 The Potential for Constitutional Dialogue Between the Courts and the Legislature

One of the most important theoretical developments in constitutional jurisprudence since the 1990s is the concept of constitutional dialogue: the idea that the relationship between courts and legislatures in constitutional systems is not one of judicial supremacy but of ongoing dialogue, in which courts articulate constitutional principles and legislatures respond, sometimes by implementing those principles and sometimes by offering alternative approaches that the court then evaluates in subsequent cases. The dialogue theory, developed by Peter Hogg and Allison Bushell in the Canadian context and subsequently elaborated by scholars including Christine Bateup, Luc Tremblay, and more recently in the South Asian context by scholars including Upendra Baxi and Arun Thiruvengadam, provides a sophisticated account of how courts and legislatures can work together to produce constitutional outcomes that neither could achieve alone.

Applied to Hindu personal law reform in Bangladesh, the dialogue model suggests that the most effective constitutional strategy is not for the courts to attempt to resolve all issues definitively in a single constitutional judgment, but rather to articulate the constitutional principles and direct the legislative response in a way that initiates a productive dialogue. The court's role is to establish the constitutional minimum: the equality standards that any reform of Hindu personal law must meet. The legislature's role is to give content to those standards through the exercise of its legislative discretion, enacting the specific rules that implement the constitutional principles in the social and cultural context of the Hindu community in Bangladesh. The court then evaluates whether the legislation meets the constitutional minimum, and if it does, defers to the legislature's judgment on questions of policy and detail.

This dialogue approach has several advantages over a purely adversarial model in which the court is asked to strike down all existing rules and prescribe their replacements. It respects the legislature's democratic mandate and its superior institutional capacity for the policy judgments involved in personal law reform. It creates space for community deliberation and for the accommodation of diverse voices within the Hindu community in the reform process. And it

allows the court to play its appropriate constitutional role without overreaching into territory that properly belongs to the democratic political process.

The prerequisites for a productive constitutional dialogue on Hindu personal law reform are, however, demanding. They require a court willing to articulate clear constitutional principles rather than dodging difficult questions. They require a legislature that takes the court's constitutional guidance seriously and responds to it in good faith. And they require a civil society and academic community that maintains the pressure and provides the expertise necessary to keep both institutions honest. In the post-Charter constitutional moment, with a new parliament committed to reform, an energized civil society, and a Supreme Court that has demonstrated its willingness to engage with constitutional equality issues in the Hindu personal law field through the Shishubar Dhali decision, the conditions for productive constitutional dialogue may be more favorable than they have been at any previous point in Bangladesh's history.

41.4 Digital Access to Law and the Democratization of Legal Knowledge

A dimension of the future of Hindu personal law in Bangladesh that has not received sufficient attention in the existing literature is the role of technology, specifically digital technology, in transforming the accessibility of law to ordinary citizens. The problem of legal inaccessibility that has plagued Hindu personal law in Bangladesh for more than a century, the fact that the rules are derived from ancient Sanskrit texts that most Bangladeshis cannot read, interpreted in colonial judicial decisions that are difficult to access, and applied by courts using a jurisprudential tradition that most lawyers have not studied, is in principle amenable to technological solutions that were not available in earlier periods.

Legal databases, plain-language legal information services, mobile-based legal aid applications, and AI-assisted legal advice tools all have the potential to make legal information more accessible to ordinary citizens including Hindu women who need to understand their rights. The growing availability of these technologies in Bangladesh, where mobile internet penetration has expanded dramatically in recent years, creates new possibilities for legal literacy programs, for the dissemination of information about rights and remedies, and for the empowerment of individuals to understand and assert their legal rights without necessarily being able to afford professional legal representation.

The litigation strategy proposed in this Part should be accompanied by a complementary technology strategy: the development of plain-language explanations of Hindu personal law rights and remedies in Bangla, accessible through mobile applications, the production of simplified legal information materials designed for communities with low literacy, and the training of community-based para-legal workers who can use digital tools to provide basic legal advice and assistance to Hindu women seeking to understand and enforce their rights. These technology and legal literacy initiatives will not substitute for the legislative and judicial reform advocated throughout this treatise, but they will help to ensure that whatever reforms are achieved in courts and legislatures actually reach the people whose lives they are designed to improve.

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CONCLUSION TO PART THIRTEEN

Part Thirteen has constructed a comprehensive constitutional litigation strategy for Hindu personal law reform in Bangladesh, building on the legislative blueprint provided in Part Twelve and situating it within the transformed constitutional landscape created by the July Charter of 2025 and the February 2026 referendum. The strategy proposed in this Part has several distinctive features that distinguish it from previous discussions of constitutional litigation in this field.

First, it is comprehensive rather than piecemeal: it does not propose a single case or a single challenge but a coordinated series of cases, carefully sequenced to build precedent, maintain public attention, and create maximum pressure for legislative action across all the principal domains of Hindu personal law including inheritance, marriage and divorce, adoption, and maintenance.

Second, it is theoretically grounded: the litigation strategy is explicitly rooted in the theory of transformative constitutionalism, which provides both the philosophical justification for judicial intervention in the personal law field and the methodological framework for the kind of expansive constitutional interpretation that the reform of discriminatory rules requires.

Third, it is comparatively informed: the strategy draws explicitly and in detail on the comparative experience of constitutional litigation in India, South Africa, and Nepal, extracting from those experiences the lessons most directly applicable to the Bangladeshi context and avoiding the mistakes that have undermined personal law litigation strategies in other contexts.

Fourth, it is strategically integrated: the litigation strategy is conceived as a complement to the legislative strategy proposed in Part Twelve, not as an alternative to it, and it is designed to interact with the legislative pathway in ways that maximize the prospects of comprehensive reform through either or both channels.

Fifth, it is responsive to the specific constitutional moment: the strategy is calibrated for the post-Charter constitutional landscape of Bangladesh in April 2026, taking account of the democratic mandate for reform established by the referendum, the new parliament's constitutional obligation to implement the Charter's agenda, and the specific constitutional resources that the Charter provides for arguments grounded in minority dignity and the expansion of fundamental rights.

The twelve preceding chapters of this treatise have constructed the philosophical, historical, doctrinal, comparative, constitutional, and prescriptive foundations for the comprehensive reform of Hindu personal law in Bangladesh. Part Thirteen has now added the strategic litigation dimension, providing a complete and integrated account of how reform can be pursued through both the legislative and the judicial pathways simultaneously. The two remaining parts of this treatise will address the community dimension of reform, the internal debates within the Hindu community about the appropriate pace and content of personal law change, and the international

and diaspora dimensions of the reform project, including the role of the international human rights system, the Bangladeshi diaspora, and the comparative experience of other South Asian countries in informing and supporting the reform effort.

The conclusion that this Part reaches, consistent with the conclusions of all the preceding parts, is that the reform of Hindu personal law in Bangladesh is not merely possible but constitutionally required, not merely desirable but urgent, not merely achievable but achievable through specific and identifiable pathways that this treatise has now mapped in detail. The tools are available: the constitutional provisions are clear, the judicial precedents are encouraging, the international standards are unambiguous, the theoretical frameworks are sophisticated, and the practical vehicles for change are identified. What remains is the political will, the legal courage, and the organized advocacy to use these tools effectively. That is the work of the next generation of Bangladeshi lawyers, scholars, and advocates, and this treatise is offered to them as a resource for that work.

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Part Thirteen of this treatise concludes here. Part Fourteen will examine the community and social dimensions of Hindu personal law reform in Bangladesh, analyzing the internal debates within the Hindu community about the appropriate pace and content of personal law change, the role of religious and community leaders in the reform process, the resistance from conservative quarters and the arguments deployed against reform, and the strategies for building community consent and participation that are essential for the success and durability of any legal reform. Part Fifteen will examine the international and diaspora dimensions of the reform project, including the role of the Bangladeshi Hindu diaspora, the international human rights monitoring system, and comparative experiences from India, Nepal, and Sri Lanka in informing and supporting the Bangladeshi reform effort. Part Sixteen, the final Part of this treatise, will offer a synthesis of the entire work and a forward-looking reflection on the prospects for comprehensive Hindu personal law reform in Bangladesh in the constitutional and political landscape of 2026 and beyond.

PART FOURTEEN

The Community Within the Community: Social Architecture, Internal Contestation, Caste Dynamics, Gender Politics, and the Sociology of Reform Resistance and Reform Consent in Bangladesh's Hindu Minority

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FOREWORD TO PART FOURTEEN

The preceding thirteen parts of this treatise have constructed an argument for the reform of Hindu personal law in Bangladesh from perspectives that are, in the main, external to the Hindu community itself: from constitutional principle, from international human rights law, from comparative jurisprudence, from philosophical analysis, from historical investigation, and from legislative drafting. These perspectives are all essential. No reform project can succeed without clarity about what the law requires, what justice demands, and what legislative design can deliver. But they are, by themselves, insufficient. Legal reform does not happen in a social vacuum. It happens within communities of real people with complex histories, divided loyalties, deep-seated beliefs, legitimate fears, and the kind of internal disagreements that are the mark of any living community that has not been homogenized into artificial uniformity.

Part Fourteen turns, at last, to the community itself. Who are Bangladesh's Hindus as a social group? How are they internally structured by caste, class, region, occupation, education, gender, and generation? What do different groups within the community think about the reform of their personal law, and why? Who are the leaders who speak in the community's name, and how representative are they of the community's actual diversity? What are the specific social mechanisms by which conservative opposition to personal law reform is organized and articulated, and how do those mechanisms differ from those by which progressive advocacy for reform is organized? What role do women's organizations within the Hindu community play in

the reform project, and how do they interact with the broader women's rights movement in Bangladesh? How does the community's experience of communal violence, economic displacement, and ongoing legal vulnerability shape its attitudes toward personal law reform, and does that experience create conditions that favor reform or conditions that make reform politically more difficult? And what strategies are most likely to build the community consent that any durable personal law reform must have, however strongly the constitutional and human rights case for reform may be made from outside the community?

These are questions that require sociological and anthropological analysis, not merely legal argument. They require engagement with the lived experience of the Hindu community in Bangladesh, with its internal diversity and its external pressures, with the specific ways in which gender inequality operates within the community, and with the specific ways in which law reform could improve the lives of the most vulnerable members of that community. This Part attempts to provide that analysis, drawing on the available sociological, anthropological, and ethnographic literature, on the evidence assembled by civil society organizations working with the Hindu community in Bangladesh, on the extensive documentation of the community's situation by international human rights organizations, and on the theoretical frameworks of legal sociology, community psychology, and the politics of recognition that are most useful for understanding the dynamics of reform in minority communities.

The analysis proceeds through seven chapters. Chapter Forty-Two examines the social structure of the Hindu community in Bangladesh, including its caste composition, class distribution, regional concentration, occupational patterns, and internal hierarchies. Chapter Forty-Three analyzes the community's leadership structures and the organizations through which political and religious authority is exercised, including the Bangladesh Hindu Buddhist Christian Unity Council, the various Hindu religious organizations, and the community organizations that have played roles in the reform debate. Chapter Forty-Four examines the conservative case against reform as it is made from within the Hindu community, analyzing the arguments deployed, the social interests they reflect, and their philosophical and theological sources. Chapter Forty-Five turns to the progressive forces within the community, examining the women's organizations, progressive religious voices, and academic advocates who have built the reform consensus within the community. Chapter Forty-Six examines the specific impact of the August 2024 violence, the ongoing pattern of communal attacks, and the climate of fear on the Hindu community's internal politics and on the reform debate. Chapter Forty-Seven analyzes the social psychology of reform in minority communities under conditions of external threat, drawing on comparative evidence from other minority communities in South Asia and elsewhere. Chapter Forty-Eight proposes a comprehensive strategy for building community consent, engaging community leadership, and ensuring that the reform project is genuinely owned by the community whose law is being reformed.

Throughout this Part, the analysis is informed by the most recent available evidence about the situation of the Hindu community in Bangladesh, including the documentation of violence after August 2024, the reports of international human rights organizations in 2024, 2025, and early 2026, and the academic scholarship on the community's social situation that has been published in recent years.

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CHAPTER FORTY-TWO: THE SOCIAL ARCHITECTURE OF THE HINDU COMMUNITY IN BANGLADESH

42.1 Demographics, Distribution, and the Long Decline of a Minority

To understand the sociology of the Hindu community in Bangladesh, one must begin with a fact that is at once statistical and profoundly human: the relentless demographic decline of Bangladesh's Hindu population as a proportion of the total over the more than seven decades since the partition of British India in 1947. In 1947, Hindus constituted approximately thirty percent of the population of what was then East Bengal and would become East Pakistan. By 1951, the figure had fallen to twenty-two percent, as the first wave of partition-era migration moved large numbers of Hindu families across the border to West Bengal in India. By 1991, it had fallen further to fifteen percent. By 2011, the census recorded eight and a half percent. The 2022 census, as cited in earlier parts of this treatise, recorded approximately seven point nine five percent. This trajectory of decline, sustained across eight decades, is not the result of lower birth rates among Hindus compared to Muslims. It is the result, overwhelmingly, of migration: of the departure, voluntary and forced, of millions of Hindu families from Bangladesh, driven by a combination of communal violence, economic discrimination, land dispossession, and the cumulative weight of insecurity that has made Bangladesh feel, for many Hindus, like a country that does not fully belong to them.

The Minority Rights Group International has documented this process with particular clarity, noting that the relative decline of religious minorities from twenty-three point one percent of the population in 1971 to approximately nine point six percent today represents a contraction largely due to the mass migration of the Hindu population. The specific mechanisms of this migration are complex and overlapping: the Enemy Property Act of 1965, later renamed and in some respects maintained as the Vested Property Act of Bangladesh after independence, which enabled the state seizure of Hindu-owned land; the cycles of communal violence that have accompanied major political events in Bangladesh, from the 1971 Liberation War through the elections of 2001 and 2014 to the political upheaval of 2024; the economic discrimination that has historically disadvantaged Hindu communities in public employment, in access to government contracts, and in the informal economy of social networks in which religious identity plays a structuring role.

The demographic decline of the Hindu community is not merely a statistic. It is a social trauma that shapes everything about how the community relates to the question of its own legal reform. A community that has watched itself shrink from one quarter of the population to less than one tenth in eight decades, that has seen its most educated and economically capable members leave for India, the United Kingdom, the United States, and Australia, that has experienced repeated cycles of violence and dispossession, and that lives with the constant awareness that it is a minority in a state whose majority community's relationship to it is complex and historically fraught, is a community whose internal politics are shaped in fundamental ways by insecurity, by the experience of vulnerability, and by the strategic calculations that vulnerability imposes.

This context is essential for understanding why the reform of Hindu personal law in Bangladesh has been politically so much more difficult than the reform of Hindu personal law in India. In India, the Hindu community is the majority community, and its leadership can advocate for personal law reform from a position of demographic security. In Bangladesh, the Hindu community is a minority, and its leadership must weigh the potential benefits of personal law reform against the potential risks of drawing attention to itself, provoking conservative majority hostility, or creating internal divisions that weaken its ability to present a united front in the face of external threats. This calculation does not justify the perpetuation of discriminatory personal law. But it helps to explain why the reform debate within the Hindu community in Bangladesh has been more muted, more cautious, and more internally divided than the equivalent debate in India.

42.2 The Caste Structure and Its Legal Implications

The Hindu community in Bangladesh is not a homogeneous social unit. It is internally structured by the caste system, one of the most complex and most contested features of Hindu social organization, which divides Hindus into a hierarchy of endogamous groups that have historically determined not only social status but also occupation, marriage choices, property rights, and access to religious ceremonies. Understanding the caste structure of Bangladesh's Hindu community is essential for understanding both the substantive content of Hindu personal law, which historically encoded caste distinctions in multiple ways, and the politics of personal law reform, which is shaped in important ways by the interests of different caste groups.

The major caste groupings within Bangladesh's Hindu community follow the broad pattern of the caste system in Bengal generally. The upper castes, the Brahmins, Kayasthas, and Vaidyas, who together are sometimes referred to as the Bhadralok or gentlefolk in the Bengali social vocabulary, have historically dominated the professional and commercial sectors of Hindu society in Bangladesh. They have been disproportionately represented in the legal profession, the medical profession, education, and trade, and they have historically had greater access to the courts and the legal system than lower-caste Hindus. The caste composition of the legal profession itself, both the lawyers and the judges who have dealt with Hindu personal law cases, has historically been dominated by upper-caste Hindus, which has important implications for whose interests are most effectively represented in the legal system and whose voices are most likely to be heard in the reform debate.

The intermediate and lower castes, including the Namasudra or agricultural communities, the Teli or oil-pressing communities, the Saha or trader communities, the Malo or fishing communities, and many others, represent the numerical majority of Bangladesh's Hindu population. These communities have historically been more rural, more economically marginal, and less educated than the upper-caste communities, and they have faced not only the vulnerabilities that all Hindus face in Bangladesh but also the additional vulnerabilities that low-caste status imposes: discrimination in access to education, to employment, to religious institutions, and to the legal system itself.

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At the very bottom of the caste hierarchy, the Dalit communities, those formerly classified as untouchables or scheduled castes, represent a particularly vulnerable population within an already vulnerable minority. The Dalit population within Bangladesh's Hindu community has been marginalized and discriminated against not only by the majority Muslim community but also by higher-caste Hindus, a form of double discrimination that compounds the already severe disadvantages of minority status with the additional burdens of caste stigma and poverty. The Minority Rights Group International has specifically noted this double marginalization, observing that the Dalit population within the Hindu community has been discriminated against by higher castes.

The implications of this caste structure for the personal law reform debate are significant and insufficiently appreciated in the existing literature. The rules of Hindu personal law that are most in need of reform are not uniformly distributed across the caste hierarchy. The rules of inheritance, adoption, and marriage have historically been applied differently to different caste groups, with the most restrictive and discriminatory rules being applied most consistently to upper-caste women who were most subject to the full force of the Brahmanical textual tradition. Lower-caste women have in some communities historically enjoyed greater practical freedom in matters of marriage, separation, and property than the textual rules would suggest, because the formal legal system has been less present in their lives and because their communities have maintained alternative customary arrangements that the courts have sometimes recognized as deviating from the textual default.

This complexity has two important implications for the reform strategy. First, a reform of Hindu personal law must be attentive to the diversity of actual practice across different caste communities and must be designed to recognize and accommodate legitimate customary variations rather than imposing a single uniform standard derived from the upper-caste textual tradition. Second, the reform debate itself must be inclusive of voices from lower-caste and Dalit Hindu communities, whose experiences of the personal law system and whose interests in its reform may differ in important respects from those of the upper-caste communities that have historically dominated the leadership of Hindu organizations in Bangladesh.

42.3 Class, Urbanization, and the Changing Face of Hindu Bangladesh

The Hindu community in Bangladesh is undergoing a process of rapid socio-economic change that is relevant to the reform debate in ways that the existing literature has not fully engaged with. The traditional picture of the Hindu community in Bangladesh as predominantly rural, concentrated in agriculture and trade, and distinguished from the Muslim majority primarily by religion and somewhat by occupation, has been significantly modified by the processes of urbanization and economic modernization that have transformed Bangladesh as a whole over the past three decades.

The urbanization of the Hindu community has been substantial. Dhaka's Hindu communities, concentrated historically in areas like Shakhari Bazar, Wari, Ramna, and parts of Old Dhaka, have grown as Hindus from rural areas have migrated to the city in search of education and economic opportunity. Other major cities including Chittagong, Rajshahi, Khulna, and Sylhet

have similar patterns of Hindu urban concentration. Urban Hindus, especially those with access to higher education and professional employment, have been exposed to a broader range of ideas about gender equality, about the role of law in social life, and about the comparative situation of Hindu women in India and elsewhere, than their rural counterparts.

The urban middle-class within the Hindu community is, in many respects, the social group most likely to support personal law reform. Its members are most likely to be aware of the discriminatory character of the existing rules, most likely to have been affected by those rules in specific legal situations, most likely to have had contact with legal advocacy organizations and women's rights groups, and most likely to be sympathetic to arguments grounded in constitutional rights and gender equality. The women within this group, who are often educated professionals with awareness of their legal disadvantage, are the group whose voice has been most articulate in the reform debate and whose personal experience of discriminatory personal law provides the most compelling human evidence of the need for reform.

The rural Hindu community presents a more complex picture. Rural Hindus, particularly those in the southwest of Bangladesh including the districts of Khulna, Satkhira, Bagerhat, and Jessore, which have historically had significant Hindu populations, and those in the northwest including the districts of Rajshahi, Dinajpur, Thakurgaon, and Joypurhat, are more subject to the practical operation of discriminatory personal law in its most concrete forms: the widow who loses access to her husband's land to his brothers, the woman who has no legal means to escape an abusive marriage, the daughter who watches her brothers divide the family property while she receives nothing. For these women, the reform of personal law is not an abstract question of constitutional principle but a matter of immediate economic survival. The disconnect between the urgency of the need and the relative quietness of advocacy from within the rural Hindu community reflects not indifference to the issue but the structural barriers of poverty, distance from legal resources, and the particular difficulties that communal vulnerability creates for public advocacy.

42.4 Regional Concentration and the Geography of Vulnerability

The geographic distribution of the Hindu community within Bangladesh is not uniform, and the geographic pattern of that distribution has significant implications for both the experience of personal law discrimination and the politics of personal law reform. The highest concentrations of Hindu population are found in the southwestern divisions of Khulna and Barisal, in parts of Chittagong and Sylhet in the east, and in scattered concentrations across the northern districts. These regional concentrations reflect the historical patterns of Hindu settlement in Bengal, modified by decades of migration both within Bangladesh and across the border to India.

The southwestern districts have historically been the areas most severely affected by both communal violence and land dispossession. The combination of geographic proximity to India, which has historically made emigration relatively accessible, and the specific mechanisms of the Vested Property Act, which particularly affected Hindu landowners in these areas, has contributed to a particularly severe decline in Hindu population in the southwest. The Sundarbans region and the coastal areas of Khulna and Satkhira have seen some of the most dramatic demographic changes in the Hindu community over the past several decades.

The regional concentration of the Hindu community creates a specific dynamic in the reform debate: the areas where Hindus are most numerous are often the areas where they are most vulnerable to communal pressure, making organized advocacy for personal law reform particularly difficult. In areas where the Hindu community is small and isolated, the practical problems of personal law discrimination are experienced individually and silently, without the community density necessary to support organized advocacy. It is primarily in the urban centers, where Hindu populations are larger, more educated, and more connected to civil society networks, that organized advocacy for personal law reform has been possible.

CHAPTER FORTY-THREE: THE LEADERSHIP STRUCTURES OF THE HINDU COMMUNITY

43.1 The Bangladesh Hindu Buddhist Christian Unity Council

The most prominent and politically visible organization claiming to represent the interests of the Hindu community in Bangladesh is the Bangladesh Hindu Buddhist Christian Unity Council, known by its Bangla acronym BHBCUC. The organization was established in 1988, following the Eighth Constitutional Amendment that declared Islam the state religion of Bangladesh, as a platform for the three major non-Muslim religious communities to organize collectively in defense of their shared interests in a state whose formal constitutional identity had shifted in a direction they experienced as exclusionary.

The BHBCUC has played a significant role in documenting violence against religious minorities, in advocating for the interests of minority communities before the government and the international community, and in organizing political responses to specific threats and incidents. Its documentation of violence after the August 2024 political upheaval, which recorded more than two thousand incidents of attacks on minorities in the sixteen days between August 4 and August 20, 2024, and subsequently recorded 2,184 incidents of violence against religious minorities between August 4, 2024 and December 31, 2024, has been a crucial source of evidence about the security situation of the Hindu community and has been cited by international human rights organizations and foreign governments in their assessments of Bangladesh's treatment of religious minorities.

The BHBCUC has also been an active advocate for legal reforms affecting minority communities, including reform of the Vested Property Act, establishment of a National Minority Commission, and enactment of a special law for the safety of religious minority communities. In September 2023, the organization announced a hunger strike to demand implementation of these long-standing reform commitments, highlighting the frustration within the minority community at the gap between political promises and actual government action.

However, the BHBCUC's relationship to the question of Hindu personal law reform is complex and has not always been unambiguously supportive of gender equality within Hindu personal law. The organization's leadership has historically been male-dominated, drawn primarily from

the upper-caste professional and business communities, and its advocacy priorities have been shaped by the concerns of this leadership stratum. The issues of communal violence, land dispossession, and the political representation of religious minorities have dominated the BHBCUC's agenda, while the internal gender inequality embedded in Hindu personal law has received less consistent attention.

This pattern reflects a broader tension within minority community advocacy organizations: the tendency to prioritize the interests and concerns of the majority within the minority, often the economically and socially dominant men of the community, while the interests of the most vulnerable within the minority, often women and lower-caste members, are treated as secondary. This tendency is not unique to the BHBCUC or to Bangladesh's Hindu community. It is a pervasive feature of minority community politics in South Asia and elsewhere, and it has been extensively analyzed in the feminist critique of community representation that scholars including Ratna Kapur, Zoya Hasan, and Flavia Agnes have developed in the Indian context.

A genuinely inclusive advocacy strategy for Hindu personal law reform must engage with the BHBCUC as a significant institutional actor while simultaneously challenging the male-dominated leadership patterns that have historically limited the organization's commitment to internal gender equality. This requires both external pressure, from women's rights organizations and constitutional advocacy groups, and internal advocacy, from progressive members of the Hindu community who can make the case from within that the community's long-term interests require the reform of discriminatory personal law rules.

43.2 Hindu Religious Organizations and the Temple Establishment

The formal religious institutions of the Hindu community in Bangladesh, including the major temples, the Puja committees that organize the major festivals, the various sectarian organizations associated with different traditions within Hinduism, and the religious educational establishments, constitute a second major axis of community authority alongside the secular community organizations like the BHBCUC. The relationship between these religious institutions and the question of personal law reform is complex and ambivalent.

Hindu temples in Bangladesh play multiple social roles that extend far beyond the purely religious. They are community centers where people gather for social events, where disputes are sometimes mediated informally, where resources are pooled for collective purposes, and where community identity is reinforced. The leaders of major temples, including the priests and the lay committees that govern them, are significant figures of social authority within their local communities. Their attitudes toward personal law reform can influence the attitudes of the broader community in important ways, both by directly expressing opinions and by creating the social atmosphere in which discussion of the issue takes place.

The formal religious leadership of the Hindu community in Bangladesh has historically been cautious about the question of personal law reform, reflecting the same conservatism that has characterized Hindu religious establishments in many parts of South Asia. The most important reason for this caution is theological rather than merely political: many Hindu religious leaders,

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and particularly those associated with the more orthodox Brahmanical traditions, regard the rules of personal law as expressions of Dharma, the cosmic-normative order that the religious tradition is charged with preserving. To change these rules is, on this view, not merely a policy adjustment but a departure from Dharmic obligation, and the religious leader who endorses such change bears a serious theological responsibility.

This theological conservatism has, however, been challenged within the Hindu religious tradition itself by a significant body of reform theology. The tradition of Hindu social reform, which has roots in the eighteenth and nineteenth century movements associated with figures like Ram Mohan Roy, Swami Vivekananda, and Dayananda Saraswati, has consistently argued that the discriminatory social practices associated with the Brahmanical textual tradition are not essential features of Hinduism but historical accretions that are contrary to the deeper spiritual equality at the heart of the Vedantic tradition. This reform theology provides religious leaders who wish to support personal law reform with a theological vocabulary and a legitimizing authority for doing so, and it has been invoked by progressive Hindu scholars and religious leaders in both India and Bangladesh in support of arguments for gender equality within the tradition.

The November 2024 arrest of Chinmoy Das, a Hindu monk associated with a devotional movement, on charges of sedition, and his subsequent denial of bail, became one of the most politically charged events in the recent history of Bangladesh's Hindu community. The case, which was taken up by Indian media and the Indian government as evidence of minority persecution and which fueled a significant deterioration in India-Bangladesh relations, illustrates the complex intersection of religious authority, community politics, and national security discourse that shapes the environment in which Hindu personal law reform must be pursued. The Chinmoy Das case demonstrated both the vulnerability of Hindu religious leaders to legal action by the state and the way in which cases involving prominent Hindu religious figures can rapidly escalate into major controversies with international dimensions, complicating the ability of any actor, whether in the Hindu community, the Bangladesh government, or international advocacy organizations, to focus calmly on the substantive question of what kind of legal reform the Hindu community needs.

43.3 Women's Organizations Within the Hindu Community

The most consistent and most principled advocates for Hindu personal law reform from within the Hindu community have been the women's organizations, both those specifically organized by Hindu women and those broader women's rights organizations in Bangladesh that have included Hindu women's issues within their broader advocacy agendas. These organizations represent the strongest internal constituency for reform and deserve careful examination both as advocates and as potential agents of community change.

The organizations most directly engaged with Hindu women's rights in Bangladesh include Hindu women's wings of broader women's organizations, community-based groups organized around specific issues such as the rights of Hindu widows or the protection of Hindu girls from forced conversion and marriage, and the Hindu women's sections of civil society organizations like Ain O Shalish Kendra and Bangladesh Mahila Parishad. The Bangladesh Mahila Parishad,

one of the oldest and most prominent women's rights organizations in Bangladesh, has a specifically Hindu women's committee and has been consistently engaged with the question of Hindu personal law reform, including documenting specific cases of discrimination and advocating for legislative change.

These organizations have been responsible for some of the most important concrete contributions to the reform debate: the collection and documentation of specific cases in which discriminatory personal law rules have produced concrete harm to specific women, the preparation of advocacy materials in accessible Bangla that explain the discriminatory rules and their consequences to ordinary community members, the organization of community meetings and discussions at which personal law issues are raised and debated, and the training of community-based advocates who can provide basic legal information and support to Hindu women in need.

The political situation of Hindu women's organizations within the broader Hindu community is, however, genuinely difficult. These organizations must simultaneously advocate for gender equality within the community, which requires challenging the authority of male-dominated community institutions, and maintain community solidarity in the face of external threats, which requires presenting a united front with those same institutions. This tension, between internal advocacy for gender justice and external solidarity in the face of communal hostility, is one of the defining characteristics of the political situation of women within minority communities everywhere, and it has been analyzed extensively in the feminist literature on minority women's rights.

Ratna Kapur's analysis of the situation of minority women in India, arguing that mainstream feminism has too often treated minority women as victims of their own communities rather than as agents capable of claiming rights on their own terms, is directly relevant to the Bangladeshi situation. A reform strategy that treats the Hindu community primarily as an obstacle to be overcome, rather than as a community within which progressive forces are already working for change, will fail to build the community ownership that durable reform requires. The most effective advocacy for Hindu personal law reform from within the community will be advocacy that is led by Hindu women themselves, that draws on the specific experiences and needs of Hindu women in Bangladesh, that respects the community's religious traditions while insisting on the compatibility of those traditions with gender equality, and that builds solidarity rather than antagonism between the internal reform advocates and the community leadership.

43.4 The Puja Committees and Informal Community Governance

A dimension of Hindu community governance in Bangladesh that has received insufficient attention in the reform literature is the role of the Puja committees, the informal bodies that organize the major Hindu festivals, particularly Durga Puja, the most important annual festival of the Bengali Hindu community. These committees function as a form of informal community governance that operates in parallel with and sometimes in tension with the formal organizational structures of the BHBCUC and the religious institutions.

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Puja committees are organized at the neighborhood or locality level and have authority over the allocation of community resources, the organization of collective events, the resolution of minor disputes, and the maintenance of community infrastructure including temples and cremation grounds. Their leadership is typically male and drawn from the economically dominant members of the local Hindu community, reflecting the same patterns of gender and class exclusion that characterize formal Hindu community organizations. But Puja committees are also spaces of intense community socialization, places where the norms and values of the Hindu community are reproduced and sometimes contested, and where new ideas, including ideas about gender equality and personal law reform, can potentially enter community consciousness.

The potential role of Puja committees in the personal law reform project has not been adequately explored. These committees reach directly into the social life of the Hindu community at the most local level, in ways that formal organizations and legal advocacy groups do not. A reform strategy that engages with Puja committees, that brings discussions of personal law rights and reforms into the spaces of community socialization, that uses the occasion of major festivals as opportunities for legal literacy and awareness-raising, would be reaching the Hindu community in the most direct and culturally resonant way possible.

CHAPTER FORTY-FOUR: THE CONSERVATIVE CASE AGAINST REFORM FROM WITHIN THE COMMUNITY

44.1 The Theological Argument: Dharma, Stridharma, and the Sanctity of Tradition

The most powerful and most philosophically interesting objection to Hindu personal law reform from within the Hindu community is not an argument of political interest or tactical calculation. It is a genuine theological argument about the nature of Dharma and the relationship between religious tradition and social change. This argument deserves careful and respectful engagement, both because it reflects genuine religious conviction and because its philosophical weaknesses, when properly exposed, provide some of the most powerful resources for the reform argument within the tradition itself.

The theological conservative argument against personal law reform begins with the concept of Stridharma, the specifically feminine Dharma, the normative order appropriate to women as a class. In the Dharmasastra tradition, Stridharma is not understood as a set of arbitrary restrictions imposed on women by men. It is understood as the expression of women's cosmic role, their specific place in the normative order of the universe as it was revealed to the ancient sages and transmitted through the textual tradition. A woman who fulfills her Stridharma by being a devoted wife, by managing the household, by supporting her husband's religious obligations, and by raising children who will continue the family lineage, is a woman who is, on this view, fulfilling her deepest purpose as a human being. The rules of personal law that require a widow to defer to her in-laws, that give sons precedence over daughters in inheritance, that restrict women's independent legal capacity in certain domains, are, on this view, not merely customary arrangements but expressions of a divinely ordered social structure.

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This argument has several serious philosophical weaknesses, which scholars within the Hindu tradition have identified and analyzed. The first is the problem of selective textual authority: the Dharmasastra tradition itself is not uniform on questions of gender. As we have noted in earlier parts of this treatise, there are passages in the Vedas, the Upanishads, the Mahabharata, and the Smritis themselves that celebrate women's spiritual equality, that attribute great learning and authority to female sages, and that contain formulations of Stridharma that are far less restrictive than the Manusmriti passages that conservatives most frequently cite. The conservative theological argument for maintaining discriminatory personal law rules depends on a selective reading of the tradition that privileges certain texts over others, and a more balanced engagement with the full range of the textual tradition produces a very different picture of what Dharma requires in relation to women.

The second weakness is the argument from Kaliyuga adaptation, which we have also discussed in earlier parts of this treatise. The Dharmasastra tradition itself recognizes that Dharma is adapted to the conditions of each age, and that the Kaliyuga, the current degenerate age in the Hindu cyclical cosmology, requires specific adaptations of Dharmic practice that depart from the prescriptions appropriate to earlier, purer ages. Conservative religious leaders who cite this argument in one context, as a reason for relaxing certain ritual requirements or for adapting Dharmic practice to modern conditions, cannot coherently invoke an absolutist traditionalism in the specific context of personal law. The tradition itself provides the resources for arguing that Dharmic adaptation to the conditions of the present age supports, rather than opposes, gender equality in personal law.

The third weakness, and the most philosophically fundamental, is the argument from the internal standards of Dharma itself. If Dharma is the normative order that sustains the harmonious functioning of the cosmos and the flourishing of human beings, then a set of personal law rules that systematically denies the agency, impoverishes the livelihoods, and subordinates the dignity of half the human beings subject to them cannot be Dharmic in any defensible sense. The most profound challenge to the conservative theological argument is not the argument from secular constitutional principle but the argument from within the tradition: that the discrimination embedded in Hindu personal law as applied in Bangladesh violates the tradition's own deepest commitments to human dignity, to the flourishing of all living beings, and to the maintenance of a social order that enables human beings to fulfill their full potential.

44.2 The Social Stability Argument: Community Cohesion and the Dangers of Reform

The second major category of conservative argument against personal law reform within the Hindu community is not theological but social and strategic. It holds that in the specific conditions of Bangladesh's Hindu minority, reform of personal law would create social disruption, would be exploited by those who wish to harm the community, and would ultimately be more damaging to Hindu women than the status quo. This argument is advanced not only by those with conservative theological commitments but also by pragmatically minded community leaders who are genuinely concerned about the community's survival under conditions of minority stress.

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The social stability argument takes several specific forms. One form argues that family law in the Hindu community functions as a system of social security: that the rules giving male relatives authority over property and inheritance reflect an underlying arrangement in which those same male relatives bear obligations of support for female family members, and that dismantling the formal structure of male control without simultaneously ensuring that the underlying support obligations are maintained would leave women worse off rather than better. This argument has some empirical basis in traditional community practice, but it significantly overstates the reliability with which male relatives actually fulfill their support obligations in the absence of a binding legal framework, and it ignores the extent to which the absence of formal legal rights in property and inheritance leaves women vulnerable to the failure of those informal obligations.

A second form of the social stability argument focuses on the risk of backlash: the argument that advocacy for personal law reform will be used by hostile actors as a pretext for violence against the Hindu community, that it will be portrayed as an attack on Hindu culture by enemies of the community, and that it will therefore create security risks that outweigh the legal benefits. This argument reflects the real experience of minority communities whose internal advocacy has been instrumentalized by hostile outsiders. But it accepts a condition of permanent subordination as the price of safety, and it fails to recognize that the long-term security of the Hindu community in Bangladesh depends ultimately on its ability to claim full and equal citizenship, not on its willingness to accept inferior legal status as a bargaining chip for physical protection.

A third form, which is perhaps the most philosophically interesting, argues that the rules of Hindu personal law, however imperfect they may appear when measured against constitutional equality standards, reflect a coherent and internally consistent vision of the family and its obligations that has historically provided a measure of protection and social order for the communities governed by it, and that replacing it with a legally rationalized but socially alien framework would disrupt patterns of social life in ways whose consequences are difficult to predict and potentially harmful. This argument is a variant of the communitarian critique of liberal legal reform that has been advanced by thinkers including Alasdair MacIntyre, Michael Sandel, and Charles Taylor in the broader philosophical literature. It deserves a serious response.

The response to the communitarian argument must acknowledge what is true in it before arguing for what is wrong with it. What is true is that law reform is not self-executing: changing the formal rules of property and inheritance does not, by itself, change the social relations, the economic structures, and the cultural assumptions that shape how those rules are actually applied. A reform of Hindu personal law that is not accompanied by changes in social attitudes, in economic structures, and in the practical mechanisms of legal access and enforcement, will be a reform that looks good on paper but achieves little in practice. This is a genuine risk that the reform strategy must take seriously, and it is one reason why Part Twelve of this treatise emphasized the importance of implementation mechanisms, legal aid, and judicial training as essential complements to the substantive legislative changes.

But what is wrong with the communitarian argument, in its application to Hindu personal law in Bangladesh, is its conflation of cultural authenticity with structural injustice. The rules of Hindu personal law as they actually operate in Bangladesh are not the authentic expression of a

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coherent Hindu cultural vision of the family. They are a colonial construction, shaped by British administrative convenience and the particular interests of the Brahmanical scholarly class that the colonial courts relied on as experts. The social arrangements they produce, including the systematic economic dependence of women on male relatives and the legal trapping of women in abusive marriages, are not features of a coherent and flourishing Hindu social order but the products of legal stagnation in a system that was never designed to serve the interests of the women it governs. To defend these arrangements in the name of cultural authenticity is to confuse a colonial distortion of the tradition with the tradition itself.

44.3 The Political Instrumentalization Argument

A third category of conservative argument within the community is more overtly political and more immediately strategic. It argues that Hindu personal law reform is a cause that has been selectively championed by actors who are not primarily concerned with the welfare of Hindu women but with the subordination or embarrassment of the Hindu community as such: that reform advocacy is used as a weapon by those who wish to interfere in the internal affairs of the community, that it is exploited by anti-Hindu actors to undermine community solidarity, and that the timing of reform advocacy is typically calibrated not to the genuine needs of the community but to the political agendas of external advocates.

This argument has elements of both truth and manipulation. There is genuine truth in the observation that the Hindu community in Bangladesh has historically been used instrumentally by political actors, from the Awami League that exploited pro-Hindu sentiment to cultivate Indian support while failing to address the community's substantive needs, to international advocacy organizations that have used the community's situation to advance geopolitical arguments, to political parties and movements in India that have used the situation of Bangladeshi Hindus to promote specific domestic political agendas. The community has good reason to be alert to instrumental uses of its situation.

But the manipulation in this argument consists in using the legitimate observation that the community has been exploited instrumentally as a reason to resist any external engagement with its situation, including engagement that is genuinely motivated by concern for the welfare of Hindu women. The instrumentalization of the community's situation by some actors does not mean that all engagement with the community's legal situation is instrumentalizing. It means that the community must be discerning about who its allies are and what their motivations are, not that it must reject all advocacy for internal reform in the name of protecting itself from external exploitation.

The most effective response to this argument is to insist on the centrality of Hindu women's voices and leadership in the reform project. A reform agenda that is visibly and genuinely led by Hindu women from within the community, that responds to the specific needs and concerns that Hindu women themselves articulate, that is developed in consultation with the community's own organizations, and that is pursued through the constitutional and legal channels available within Bangladesh's democratic order, cannot be dismissed as an externally imposed agenda. The political instrumentalization argument loses its force when the reform project is demonstrably an

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internal project of the community itself, led by its most vulnerable and most directly affected members.

CHAPTER FORTY-FIVE: THE PROGRESSIVE FORCES WITHIN THE COMMUNITY

45.1 The Internal Reform Tradition: Historical Antecedents and Contemporary Voices

The conservative case against Hindu personal law reform is powerful and must be taken seriously, but it is not the only voice within the Hindu community in Bangladesh. There is a significant and growing tradition of internal advocacy for reform, with roots in the nineteenth-century social reform movements and with contemporary expression in the work of progressive scholars, lawyers, women's organizations, and religious leaders who argue, from within the tradition, that gender equality is not contrary to Hindu values but demanded by them.

The nineteenth-century social reform movement associated with Ram Mohan Roy, the Bengali Hindu intellectual who founded the Brahmo Samaj in 1828, provides the most important historical precedent for internal Hindu reform advocacy. Roy's campaign against sati, the practice of widow immolation, and his advocacy for women's property rights were grounded in a careful engagement with the Sanskrit textual tradition that identified passages supporting women's rights and challenged the conservative interpretations that had suppressed them. Roy's approach, of arguing from within the tradition to challenge conservative readings of it, is precisely the methodological model that contemporary internal reform advocates should follow.

In Bangladesh's specific context, the most important contemporary voices for internal reform within the Hindu community include the following. The academic scholars who have written on the need for Hindu personal law reform in Bangladesh, including those associated with the Dhaka University Faculty of Law, the Bangladesh Institute of Law and International Affairs, and the various journals and platforms that have published reform-oriented analysis of Hindu personal law since 2020, represent an intellectual constituency whose voices carry weight within the educated sections of the community. The publication of reform-oriented legal analysis in accessible formats, including the work published in Eurasia Review, Lawyers Club Bangladesh, and SSRN's comparative law databases in 2024 and 2025, has created a body of scholarly argument that internal reform advocates can draw on and cite.

The female lawyers, advocates, and legal academics who have engaged with Hindu personal law reform from a professional perspective represent a particularly important internal constituency. These women bring together professional legal expertise and personal experience of the community's situation in ways that give their advocacy a distinctive credibility. The growing presence of Hindu women in the legal profession in Bangladesh, including at the bar of the Supreme Court, creates a pool of potential advocates who combine constitutional knowledge with community membership in ways that are uniquely valuable for the litigation and legislative strategies proposed in this treatise.

The progressive religious leaders who have argued that the Dharmasastra tradition supports gender equality deserve specific mention. Within the Vaishnava tradition, which has a significant presence in Bangladesh and which in its philosophical foundations emphasizes the spiritual equality of all persons regardless of gender and caste, there are religious leaders who have argued explicitly that the discriminatory rules of Hindu personal law are contrary to the spiritual commitments of their tradition. The ISKCON movement, which has a significant presence in Bangladesh, has historically been associated with arguments for spiritual equality that, while not always translated into advocacy for legal equality, create a religious environment that is more receptive to arguments for personal law reform than the more orthodox Brahmanical tradition.

45.2 The Generational Divide and the Politics of Young Hindu Bangladesh

One of the most significant developments in the internal politics of the Hindu community in Bangladesh over the past decade has been the emergence of a younger generation of Hindus, educated in Bangladesh's expanding university system, connected to global information networks through social media, and increasingly unwilling to accept the combination of external discrimination and internal gender inequality as the inevitable conditions of their existence.

This younger generation has grown up in a different informational environment from their parents and grandparents. They have access to information about the situation of Hindus in India, where their counterparts have the benefit of reformed and codified personal law. They have access to discussions of gender equality and constitutional rights through social media, through university education, and through the growing civil society of Bangladesh. They are aware of the Shishubar Dhali decision and its implications. And they are increasingly assertive about their rights, both within the community and in their relationship with the state.

The political engagement of young Bangladeshi Hindus has been significantly shaped by the events of July and August 2024, when the student-led uprising against the Hasina government created a moment of political possibility and simultaneously exposed the Hindu community to the risk of communal violence. Many young Hindus participated in the uprising alongside their Muslim peers, sharing in both the aspiration for political change and the vulnerability that the subsequent violence against minority communities created. This shared political experience has both strengthened the connections between young Hindu Bangladeshis and the broader reform movement and created a specific consciousness of the need for legal protection that gives urgency to the reform agenda.

The generational divide within the Hindu community on questions of personal law is significant. Younger educated Hindus, both men and women, are substantially more likely to support the reform of discriminatory personal law rules than older community members, particularly those in rural areas and those with strong connections to traditional religious institutions. This generational pattern is not unique to Bangladesh: it mirrors the generational dynamics of personal law debates in India, Nepal, and other South Asian countries, and it suggests that the reform constituency within the Hindu community is growing over time, as older generations are replaced by younger ones who have been shaped by different educational and informational environments.

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45.3 Hindu Women's Organizations and Their Reform Advocacy

The organizations most directly and consistently engaged in advocacy for Hindu personal law reform from within the community are the women's organizations that have documented the discriminatory impact of the existing rules on the lives of Hindu women in Bangladesh. These organizations deserve specific attention both as advocates and as potential architects of the community consultation process that any serious reform effort requires.

Bangladesh Mahila Parishad, with its specific Hindu women's committee, has been the most consistently engaged broad-based women's organization with the question of Hindu personal law reform. The organization has documented specific cases in which the absence of divorce law, the discriminatory inheritance rules, and the inadequacy of the maintenance framework have produced specific harms to specific women, and it has used these documented cases in its advocacy both to the government and to international human rights bodies. The case documentation work of organizations like Bangladesh Mahila Parishad and Ain O Shalish Kendra is among the most important intellectual resources available to the reform project, providing the human evidence without which constitutional and legal arguments remain abstract.

The Hindu women's rights organizations that operate at the community level, addressing specific cases of dispossession, abandonment, and forced marriage, represent another dimension of the internal advocacy infrastructure. These organizations, often operating with very limited resources in environments of genuine risk, provide the most direct evidence of the human consequences of discriminatory personal law. Their work is simultaneously the most concrete demonstration of the need for reform and the most vulnerable to disruption by the communal violence and political instability that periodically convulse Bangladesh's Hindu community.

The relationship between Hindu women's organizations and the broader women's rights movement in Bangladesh is a complex and sometimes uncomfortable one. The broader women's rights movement, which is predominantly Muslim in its leadership and membership, has sometimes treated Hindu women's personal law issues as peripheral to its main concerns, focusing its energy on the reform of Muslim personal law and the broader issues of gender-based violence and economic inequality that affect all women regardless of religion. Hindu women's organizations have sometimes experienced this as a form of marginalization, a failure to recognize that the specific situation of Hindu women within the personal law system requires specific advocacy attention.

But there are also important grounds for solidarity between the Hindu women's rights movement and the broader women's rights movement in Bangladesh. The fundamental issues of gender equality, of women's right to property, to exit from abusive relationships, to the full exercise of their constitutional rights, are the same issues regardless of which personal law system is in question. The constitutional arguments that support the reform of Hindu personal law are closely parallel to the constitutional arguments that have been made for the reform of Muslim personal law, and the strategic lessons learned from Muslim personal law advocacy are directly applicable to the Hindu context. A reform strategy that builds genuine solidarity between the Hindu

women's rights movement and the broader women's rights movement in Bangladesh would be significantly more powerful than one that proceeds in isolation from either direction.

45.4 Civil Society Organizations and External Advocates

The advocacy ecosystem within which the Hindu personal law reform debate takes place includes not only organizations within the Hindu community but a broader range of civil society organizations that have engaged with the issue from a legal rights, constitutional, or general human rights perspective. These organizations, which include Ain O Shalish Kendra, BLAST (Bangladesh Legal Aid and Services Trust), the Bangladesh Institute of Law and International Affairs, and various academic institutions, have contributed to the reform debate through research, documentation, litigation support, and policy advocacy.

Ain O Shalish Kendra, established in 1986 as one of Bangladesh's pioneering legal aid and human rights organizations, has been the most consistently engaged civil society organization with the question of Hindu women's rights under personal law. The organization's legal aid work has brought it into direct contact with the specific legal problems that Hindu women face, and its documentation work, including the 2024 report on women's rights under Hindu personal law, has been an important resource for reform advocates. The organization's approach combines legal aid provision, which directly helps individual women navigate the legal system, with policy advocacy, which works to change the rules that create the need for legal aid in the first place.

BLAST has similarly been engaged with the question through its public interest litigation work, which has included cases challenging discriminatory personal law rules before the courts. The organization's experience with PIL litigation in other contexts, including cases on the rights of migrant workers, garment factory workers, and marginalized communities, provides it with the procedural and strategic expertise necessary for effective constitutional litigation in the Hindu personal law field.

The legal academic community in Bangladesh, working through law faculty publications, legal journals, and research institutes, has contributed a growing body of scholarly analysis of Hindu personal law reform. The work published in the Bangladesh Law Journal, the Dhaka University Law Journal, and in international outlets including SSRN has created an intellectual infrastructure of reform-oriented analysis that provides the scholarly foundation for both litigation and legislative advocacy. The academic analysis of the Shishubar Dhali decision, published in 2024 and 2025, has been particularly valuable in elaborating the implications of that decision for the broader reform agenda.

CHAPTER FORTY-SIX: THE SHADOW OF VIOLENCE: AUGUST 2024 AND ITS AFTERMATH

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46.1 The Violence of August 2024: Scale, Pattern, and Impact

No analysis of the community dynamics of Hindu personal law reform in Bangladesh in 2025 and 2026 can proceed without direct engagement with the extraordinary violence that Bangladesh's Hindu community experienced in the days and weeks following the political upheaval of August 2024. The fall of the Awami League government of Sheikh Hasina on August 5, 2024, triggered a wave of attacks on Hindu communities across Bangladesh that has been the most significant episode of communal violence against the Hindu minority since the Liberation War of 1971.

The scale of the violence has been documented by multiple sources whose specific figures differ but whose overall picture is consistent. The Bangladesh Hindu Buddhist Christian Unity Council recorded more than two thousand incidents of attack on minorities in the sixteen days between August 4 and August 20, 2024. Ain O Shalish Kendra reported a total of 926 violations against religious minorities and indigenous groups between January and December 2024. The United Kingdom Government's Country Policy and Information Note on Bangladesh, published in June 2025, recorded that the Bangladesh Police Force examined 1,769 attacks and acts of vandalism against religious minorities between August 4 and August 20, 2024, classifying 1,234 as politically motivated and 20 as communal. The Global Hindu Diaspora, in a letter to the Indian Prime Minister dated January 2026, cited more than 2,442 attacks on minorities, mostly Hindus, between August 2024 and June 2025, including 82 killings between August and November 2024.

The pattern of violence, as documented by these sources, involved attacks on Hindu temples, homes, and businesses; looting and arson; physical assaults on individuals; and in some cases murder and rape. The violence was concentrated in rural areas and in areas perceived to be sympathetic to the Awami League, reflecting a political dimension to what was also in part a communal phenomenon. The interim government's characterization of most of the violence as politically motivated rather than religiously motivated has been disputed by Hindu community organizations, which argue that the targeting of Hindu homes and temples reflects communal hostility that the political context unleashed rather than merely political conflict that happened to affect Hindus.

The violence did not end with the stabilization of the political situation. The Freedom of Thought Report, published in February 2026, noted that as Bangladesh approached the February 2026 national elections, there were reports of a renewed rise in attacks on religious minorities and increasing violence against women and girls. The Global Hindu Diaspora's January 2026 letter stated that violence against Hindus had accelerated sharply beginning August 2025, and that the scale of terror unleashed since mid-December 2025 had been unrelenting. The Human Rights Watch January 2026 report, titled "Bangladeshi Women, Girls, Minorities Face Rising Violence," provided additional documentation of the continuing pattern of attacks.

This sustained pattern of violence has several specific implications for the politics of Hindu personal law reform. First, it has created an immediate security crisis that has dominated the attention of Hindu community leaders, organizations, and advocates, leaving little bandwidth for engagement with the longer-term question of personal law reform. When the community is

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managing the immediate consequences of widespread violence, including the need to document attacks, support victims, advocate for protection from the government, and maintain basic community functions in conditions of fear, the reform of inheritance rules understandably becomes a secondary priority.

Second, the violence has reinforced the insecurity and vulnerability of the Hindu community in ways that complicate the reform debate. Arguments for personal law reform that might otherwise be received sympathetically within the community can be dismissed as dangerously naive about the community's security situation, as a luxury that the community cannot afford when its basic physical safety is under threat.

Third, the violence has in certain respects strengthened the conservative argument against internal reform by reinforcing the sense that the community's primary need is solidarity, not internal debate. This is an argument that must be directly addressed: the insistence that the community cannot pursue internal reform while facing external threats is an argument that, if accepted, would permanently foreclose reform, since the Hindu community in Bangladesh has faced some form of external threat almost continuously since independence and is likely to continue doing so for the foreseeable future. A genuine commitment to the welfare of Hindu women cannot be indefinitely deferred on grounds of security emergency.

46.2 Communal Violence and Its Specific Intersection with Personal Law Discrimination

The violence of August 2024 and its aftermath intersects with the question of Hindu personal law reform in ways that go beyond the political dynamics analyzed above. There is a specific and direct connection between the legal vulnerability created by discriminatory personal law and the vulnerability to violence and dispossession that the Hindu community experiences during episodes of communal conflict. This connection has been insufficiently emphasized in the reform debate, and making it explicit and compelling is one of the most important contributions that this treatise can make.

When a Hindu widow has no right to inherit her husband's property, her economic dependence on male relatives makes her significantly more vulnerable to the mechanisms of dispossession that operate during periods of communal tension. If her property rights are insecure, if she holds only a life interest rather than an absolute ownership interest in the family property, if she lacks the legal documentation that would establish her claim to the property, then the pressures that communal violence and its aftermath create for Hindu families to sell property below market value, to abandon property when fleeing violence, or to acquiesce in informal takeovers of property by more powerful neighbors, fall disproportionately on the women whose property rights are most insecure.

The Vested Property Act, which has been one of the principal mechanisms of Hindu land dispossession in Bangladesh since independence, operates particularly harshly on Hindu women who lack clear property rights under the personal law. When a Hindu man leaves Bangladesh, whether permanently or temporarily, his property risks being classified as vested property under the Act and transferred to government control. If his wife has no independent property rights of

her own, and if she has no rights to the marital property beyond a life interest that depends on her status as a widow, she is left doubly vulnerable: both to the mechanisms of the Vested Property Act and to the insecurity created by her own legal dependence on a husband who may be absent or deceased.

This analysis suggests a compelling argument for personal law reform that is specifically directed at the community's own experience of legal vulnerability: the reform of discriminatory personal law is not separate from the protection of the Hindu community's rights. It is a component of that protection. A Hindu woman with secure, documented, independently held property rights is significantly more resistant to the forms of dispossession that have historically accompanied communal violence in Bangladesh than a Hindu woman whose property rights depend entirely on the goodwill of male relatives. Personal law reform is therefore not merely a gender equality issue but a community security issue, and its value to the Hindu community as a whole can be made visible in the specific terms of the community's own most pressing concerns.

46.3 The Chinmoy Das Case: Religious Freedom, Sedition, and the Politicization of Community Affairs

The arrest and detention of Chinmoy Das, a Hindu monk associated with the devotional ISKCON movement, in November 2024 on charges of sedition, has become one of the most significant political events in the recent history of Bangladesh's Hindu community. The case, which arose from allegations that Chinmoy Das had disrespected the national flag of Bangladesh at a Hindu rally, was interpreted by significant sections of the Hindu community and by observers in India as evidence of the new interim government's hostility to religious minorities. The subsequent denial of bail, which kept Chinmoy Das in detention for an extended period, and the significant diplomatic fallout between Bangladesh and India, gave the case an international political dimension that far exceeded the specific facts of the individual situation.

The Chinmoy Das case is relevant to the personal law reform debate in several ways. First, it illustrates the way in which events involving prominent Hindu religious figures can rapidly become highly politicized, generating intense external pressure from India and creating a defensive response within Bangladesh that makes nuanced discussion of the community's internal legal situation extremely difficult. In the political atmosphere generated by the Chinmoy Das case, any discussion of the need for internal reform of Hindu personal law was inevitably colored by the broader political conflict between the interim government and the Hindu community, making it harder for reform advocates to distinguish their internal reform agenda from the broader political controversy.

Second, the case illustrates the vulnerability of Hindu religious and community leaders to state action, a vulnerability that has historically been used as a mechanism of social control over the Hindu community. When prominent Hindus know that their public statements, even those made in the context of religious or community gatherings, can lead to prosecution under sedition or blasphemy laws, the effect is a chilling one on internal community debate, including debate about personal law reform. A community whose leadership fears prosecution for political

expression is not a community in which free internal debate about legal reform is easily conducted.

Third, the case demonstrates the complex relationship between the Hindu community's international diaspora connections and its domestic political situation, a relationship that we will examine in more detail in Part Fifteen of this treatise. The international attention that the Chinmoy Das case attracted, both from the Hindu diaspora in India, the United Kingdom, and the United States, and from the Indian government, was both a source of support for the community and a complicating factor in the community's relationship with the Bangladesh state. Managing the relationship between domestic community politics and international diaspora advocacy is one of the most difficult challenges that the reform project faces.

CHAPTER FORTY-SEVEN: THE SOCIAL PSYCHOLOGY OF REFORM IN MINORITY COMMUNITIES UNDER CONDITIONS OF EXTERNAL THREAT

47.1 The Threat-Solidarity Nexus and Its Implications for Internal Reform

Social psychology offers a set of theoretical frameworks for understanding the dynamics of reform in minority communities that are under conditions of sustained external threat, and these frameworks are directly relevant to understanding the political dynamics of Hindu personal law reform in Bangladesh. The relevant theoretical literature includes work on intergroup relations, on minority identity and its psychological dimensions, on the social psychology of social movements, and on the specific dynamics of what social psychologists call the threat-solidarity nexus.

The threat-solidarity nexus describes a well-documented pattern in the social psychology of minority groups: that external threats to the group tend to increase internal solidarity and conformity, reducing internal dissent and making it harder for members who wish to challenge group norms to do so without being perceived as disloyal. This pattern has been documented in studies of various minority communities under conditions of discrimination and threat, including Jewish communities in Europe under the threat of antisemitism, Muslim communities in Western countries under the threat of Islamophobia, and various racial minority groups in contexts of systemic racism. The pattern is both understandable and, from the perspective of the most vulnerable members of the group, problematic: it can be used to suppress legitimate criticism of internal practices by portraying that criticism as a form of disloyalty that strengthens the external enemy.

The Hindu community in Bangladesh exemplifies this dynamic with particular clarity. Faced with sustained external threats including communal violence, land dispossession, discrimination in public employment, and the insecurity that minority status in a majority-Muslim state creates, the community has developed strong norms of internal solidarity that make it difficult for members who wish to challenge internal practices, including the discriminatory practices embedded in Hindu personal law, to do so without risking social censure for disloyalty.

Understanding this dynamic is essential for designing an effective reform strategy. A reform project that is perceived by the community as external, as imposed from outside, as serving the interests of those who wish to weaken the community or embarrass it before the majority, will trigger the threat-solidarity response and will face much stronger resistance than a reform project that is understood as internal, as serving the community's own interests, as emerging from the community's own most progressive and most vulnerable members. The internal ownership of the reform project, the genuine leadership of Hindu women and progressive community members in its design and advocacy, is therefore not merely a matter of democratic process but a strategic necessity.

47.2 The Politics of Recognition and the Double Bind of Minority Women

Feminist political philosophers, drawing on Charles Taylor's influential work on the politics of recognition, have identified what they call the double bind of minority women: the situation in which women who are members of a minority community face discrimination both from the majority society, which discriminates against them as members of their minority community, and from within their own community, which discriminates against them as women. The double bind creates a political situation in which the woman must choose, in effect, between two forms of solidarity: solidarity with her gender, which requires challenging her community's discriminatory practices, or solidarity with her community, which requires accepting those practices as the price of communal belonging.

This double bind is not theoretical for Hindu women in Bangladesh. It is the concrete reality of their daily lives. The Hindu woman who challenges the inheritance rules that deny her equal property rights must contend not only with the legal system that enforces those rules but with the social pressure from within her own community that tells her she is dishonoring the family or weakening the community's ability to present a united front against external threats. The Hindu woman who seeks to leave an abusive marriage faces not only the absence of any legal mechanism for divorce but the social condemnation of her family and community for seeking to disrupt the unity that the community's survival is understood to require.

The politics of recognition framework suggests that the most effective response to the double bind is not to choose one form of solidarity over the other but to reframe the issue in a way that makes the false choice visible. The reform of Hindu personal law is not a choice between gender solidarity and community solidarity. It is an insistence that the community must extend its solidarity to all its members, including its most vulnerable, including its women. A community that demands the solidarity of its women while denying them equal legal rights is not practicing genuine solidarity. It is practicing a form of internal exploitation that is no different in its structure from the external discrimination the community rightly condemns.

This reframing, which insists that gender justice within the community is a condition of the community's own integrity and coherence, not a threat to it, is the most powerful rhetorical and intellectual strategy available to internal reform advocates. It is a strategy that draws on the community's own deepest values, including the Dharmic commitment to justice and the Hindu

philosophical tradition's insistence on the equality of all beings before the divine, to argue that reform is not a betrayal of the tradition but its fulfillment.

47.3 Intergenerational Transmission and the Future of Community Values

The social psychology of reform in minority communities must also engage with questions of intergenerational transmission: how are values, norms, and practices transmitted from one generation to the next within the community, and what conditions make it possible for progressive values to take hold in new generations even when they are in tension with the established norms of older generations?

Research on intergenerational value transmission in minority communities consistently shows that the most important mechanisms of transmission are family, religious institution, and peer group, in that order. Changes in the values transmitted through any of these mechanisms can produce relatively rapid shifts in community norms over the course of one or two generations. The implications for the reform strategy are clear: the most effective long-term strategy for changing community attitudes toward Hindu personal law is not merely advocacy and litigation but education, specifically the legal literacy programs within the community, the religious and cultural programs that reframe Dharma in terms consistent with gender equality, and the peer networks of young educated Hindus who can model different attitudes toward gender and law within their communities.

The specific context of Bangladesh's Hindu community in 2026 is one in which significant intergenerational change in attitudes toward gender and personal law is already visible, driven by the educational expansion of the past two decades, by the exposure of younger Hindus to global information through social media, and by the specific experience of the July-August 2024 upheaval, which accelerated both the political consciousness and the constitutional awareness of many young Bangladeshi Hindus. A reform strategy that explicitly targets this younger generation, that provides it with the legal knowledge, the rhetorical resources, and the organizational support to advocate for reform from within their communities, will be building on a trajectory of social change that is already underway.

CHAPTER FORTY-EIGHT: STRATEGIES FOR BUILDING COMMUNITY CONSENT

48.1 The Consultation Framework: What Genuine Community Consultation Requires

The reform of Hindu personal law in Bangladesh cannot be simply a project of the state acting on the Hindu community. It must be, to the maximum possible extent, a project of the community itself, in which the specific rules being reformed, the pace of reform, and the design of transitional arrangements reflect the genuine input of those whose lives the law governs. This is not merely a rhetorical commitment to inclusivity. It is a substantive requirement of both democratic legitimacy and practical effectiveness: reform legislation that does not reflect genuine community input is less likely to be implemented effectively, is less likely to command

the community's respect, and is less likely to produce the social changes that the formal legal changes are designed to enable.

Genuine community consultation on personal law reform must meet several specific standards. It must be inclusive of the full diversity of the community, including not only the professional and educated strata that have the easiest access to formal consultation processes but the rural poor, the lower-caste communities, the Dalit Hindus, and above all the women whose lives are most directly affected by the discriminatory rules. It must be conducted in a language and format accessible to those with limited literacy, using community-based organizations and informal networks rather than exclusively formal institutional channels. It must allow sufficient time for genuine deliberation rather than merely ratifying conclusions already reached. And it must be designed so that the voices of the most vulnerable members of the community are given special weight, rather than being drowned out by the louder and more organized voices of those whose interests are better served by the status quo.

The specific mechanisms of community consultation that are most appropriate for this context include community meetings organized through temples, Puja committees, and women's organizations; radio and television programs in Bangla that explain the proposed reforms and invite community response; mobile-based survey and feedback tools adapted for communities with low smartphone literacy; the training of community-based facilitators who can conduct discussions in rural communities; and the establishment of a formal consultation body, proposed in Part Twelve as the National Hindu Law Commission, that provides an institutional home for ongoing community engagement with the implementation of reform.

The consultation process must also address specifically the concerns of those within the community who are likely to lose from reform. Male relatives who benefit from the preferential inheritance rules, religious leaders who see the reform as a threat to their authority, and community leaders who fear that internal reform debate will weaken community solidarity, all have specific concerns that must be engaged with honestly rather than dismissed. The case for reform must be made to them as well as to the women who stand most directly to benefit, and the case must acknowledge the legitimate concerns about implementation, community cohesion, and religious freedom while demonstrating why those concerns do not, ultimately, justify the perpetuation of discriminatory rules.

48.2 Religious and Cultural Framing: Making the Internal Case for Reform

Perhaps the most important single element of a community consent-building strategy is the development of a compelling internal religious and cultural case for reform: an argument that speaks to the community's own deepest values, draws on its own textual and philosophical traditions, and demonstrates that the reform of discriminatory personal law is not a departure from Hindu tradition but its authentic expression.

This internal case has several components. The first is a careful textual argument, engaging seriously with the Dayabhaga tradition and demonstrating, as the Shishubar Dhali court itself did, that the tradition properly understood supports rather than opposes gender equality in

inheritance and family matters. This textual argument requires the involvement of scholars with genuine expertise in Sanskrit and the Dayabhaga literature, not merely constitutional lawyers making arguments from principle. The engagement must be at the level of the tradition itself, showing that the discriminatory rules are not the inevitable expression of the tradition but the product of specific interpretive choices that were made in specific historical circumstances and that can be reversed or modified within the tradition's own framework.

The second component is a theological argument drawing on the broader Hindu philosophical tradition, particularly the Vedantic and devotional strands that emphasize the equality of all beings before the divine. The argument that God does not discriminate between men and women in granting spiritual capacity, and that a social order that systematically disadvantages women on grounds of their sex is therefore not divinely sanctioned but humanly constructed and humanly modifiable, is an argument that resonates deeply with many Hindus who may be theologically conservative but are also genuinely committed to the spiritual equality of all persons.

The third component is a pragmatic argument directed at the community's self-interest. The reform of discriminatory personal law will, as we have argued throughout this treatise, reduce the community's vulnerability to land dispossession by strengthening women's property rights. It will reduce the economic dependence of Hindu widows and abandoned wives that makes them particularly vulnerable to exploitation during episodes of communal tension. It will improve the educational outcomes of Hindu children by improving the economic security of their mothers. And it will strengthen the community's standing in Bangladesh's democratic political order by demonstrating that the community is committed not merely to demanding rights from the majority but to honoring the constitutional commitment to equality within its own practice.

48.3 Building Progressive Leadership: The Role of Younger Hindus

The most important long-term strategy for building community consent for personal law reform is the deliberate cultivation of progressive leadership within the Hindu community: younger men and women who are committed to gender equality within their community's personal law, who have the theological, legal, and political knowledge to make the case effectively, and who can take on leadership roles within community organizations, religious institutions, and political life that enable them to influence community opinion from positions of authority.

This leadership development requires specific programmatic investment. Law schools and universities should be supported in developing programs specifically directed at Hindu personal law reform, including courses that provide students with knowledge of the Dayabhaga tradition, the constitutional framework, and the reform advocacy strategies that are most effective in the community context. Organizations like BLAST and Ain O Shalish Kendra should develop specific internship and fellowship programs for young Hindu lawyers interested in personal law reform work. The Hindu community's own organizations should be supported in developing leadership development programs specifically for young women, providing them with the skills and knowledge needed to take on leadership roles in community life.

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The network of progressive young Hindus that has emerged from the shared experience of the July-August 2024 political upheaval, in which many young Hindus participated alongside their Muslim peers in the student-led uprising, represents a specific social resource that the reform project should engage with deliberately. These young people have demonstrated both their commitment to Bangladesh's broader democratic project and their awareness of the specific vulnerabilities of the Hindu community within it. They are the generation that can bridge the gap between the community's internal reform aspirations and the broader constitutional and political reform agenda that the July Charter and the February 2026 referendum have created.

48.4 The Role of Media and Cultural Production in Building Reform Consensus

The reform of Hindu personal law is not merely a legal and political project. It is also a cultural project, one that requires changes in the attitudes, beliefs, and expectations of the community as a whole, not merely in the formal rules that the legislature enacts. Cultural change of this kind is shaped by the stories that a community tells about itself, the media it consumes, the cultural productions it values, and the publicly articulated ideals of community life that shape everyday behavior and expectation.

The cultural case for Hindu personal law reform in Bangladesh has so far been made primarily in academic and legal publications accessible to a limited educated audience. The case has not been made, at least not with equivalent depth or consistency, in the cultural forms that reach the broader Hindu community: in the religious songs and devotional performances that are central to Bengali Hindu cultural life, in the literature and poetry that the community values, in the films and television programs that shape everyday attitudes, in the social media content that increasingly influences the worldview of younger Hindus.

A comprehensive reform strategy must include a cultural dimension: support for creative work that makes the human consequences of discriminatory personal law visible and that imagines a different kind of community in which women have equal rights and full dignity. This is not propaganda in any derogatory sense. It is the kind of cultural advocacy that has driven every major social reform movement in history, from the abolition of sati to the independence movement to the women's rights movement in India. The stories that a community tells about its most vulnerable members shape how those members are treated, and changing those stories is as important as changing the formal legal rules.

The specific cultural forms most relevant to the reform project in the context of Bangladesh's Hindu community include devotional music and performance, which is central to Bengali Hindu cultural life and which has historically been a medium for progressive social messages; drama and folk performance traditions, which have deep roots in the rural Hindu communities where the personal law discrimination is most acutely felt; and the growing world of Bangla-language digital media, including YouTube channels, podcasts, and social media platforms that reach educated urban Hindus with content about their community's situation and needs.

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CONCLUSION TO PART FOURTEEN

Part Fourteen has attempted to do something that is rarely done in the legal scholarship on personal law reform: to take the social reality of the community whose law is being reformed as seriously as the legal arguments for reform. The internal life of Bangladesh's Hindu community, its caste hierarchies, its class structures, its regional distribution, its leadership organizations, its theological debates, its gender politics, its experience of communal violence, and its internal dynamics of reform and resistance, are not peripheral to the legal question of how Hindu personal law should be reformed. They are central to it. A reform that does not engage with the community's social reality, that does not address the specific concerns of specific groups within the community, that does not build the community ownership that durable reform requires, will fail as surely as a reform that is legally incoherent or constitutionally defective.

The analysis in this Part has identified several specific conclusions that should inform the reform strategy. The first is that the Hindu community in Bangladesh is not a monolithic social unit but a deeply diverse one, internally structured by caste, class, gender, generation, and region in ways that produce very different experiences of and attitudes toward personal law reform. The second is that the most consistent internal advocates for reform are the women's organizations and the younger educated members of the community, who must be given the support and the institutional space necessary to translate their advocacy into effective reform pressure. The third is that the conservative arguments against reform from within the community, while they must be engaged with seriously, are ultimately theological, social, and political arguments that can be answered on their own terms, and that the most effective answers draw on the community's own deepest values rather than on external standards.

The fourth conclusion is that the climate of communal violence and insecurity created by the events of August 2024 and their aftermath is a significant complicating factor in the reform project, but that it ultimately reinforces rather than undermines the case for reform: the economic vulnerability of Hindu women under discriminatory personal law is directly connected to the vulnerability of the community as a whole to the forces of dispossession and violence that have historically threatened it. The fifth conclusion is that building community consent for reform requires a sustained and multi-dimensional strategy that combines legal advocacy, community consultation, cultural engagement, leadership development, and the deliberate cultivation of progressive forces within the community's own institutions.

Part Fifteen of this treatise will examine the international and diaspora dimensions of the reform project, analyzing the role of the Bangladeshi Hindu diaspora, the international human rights monitoring system, and the comparative experiences of Hindu communities in India, Nepal, Sri Lanka, and the diaspora countries in informing and supporting the reform effort in Bangladesh. Part Sixteen, the final Part of this treatise, will offer a synthesis of the entire work and a forward-looking reflection on the prospects for comprehensive Hindu personal law reform in Bangladesh in the constitutional and political landscape of 2026 and beyond.

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Part Fourteen of this treatise concludes here. Part Fifteen will examine the international and diaspora dimensions of the Hindu personal law reform project in Bangladesh, including the role of the Bangladeshi Hindu diaspora in the United Kingdom, the United States, India, and Australia; the engagement of the international human rights monitoring system with the specific situation of Hindu women under Bangladesh's personal law; the comparative lessons from Hindu personal law reform in India, Nepal, and Sri Lanka; the diplomatic dimensions of the minority rights question; and the specific ways in which international pressure and international solidarity can most effectively support the internal and constitutional reform effort. Part Sixteen, the final part of this treatise, will offer a comprehensive synthesis and forward-looking conclusion.

PART FIFTEEN

The World Beyond the Border: Diaspora Mobilization, International Human Rights Mechanisms, Diplomatic Dimensions, Transnational Legal Solidarity, and the Global Framework for Hindu Personal Law Reform in Bangladesh

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FOREWORD TO PART FIFTEEN

There is a temptation, when writing about the law of a particular country, to treat that country as a self-contained unit, to analyze its statutes, its court decisions, its constitutional provisions, and its political processes as though they operated in isolation from the wider world. That temptation must be firmly resisted when the subject is Hindu personal law in Bangladesh. The legal situation of Bangladesh's Hindu community, and the prospects for its reform, cannot be understood in purely domestic terms. They are embedded in a web of international legal obligations, bilateral diplomatic relationships, transnational community connections, global civil society advocacy networks, and comparative legal traditions that reach across oceans and across the history of the Hindu legal world.

This fifteenth Part of the treatise examines that wider web. It asks a question that is as practical as it is philosophical: from beyond Bangladesh's borders, what forces, what institutions, what communities, and what frameworks of law and advocacy bear upon the project of reforming Hindu personal law in Bangladesh? And how can those external dimensions be most effectively engaged in support of the internal reform effort that Parts One through Fourteen have examined in such exhaustive detail?

The question is not merely academic. In the current political landscape of Bangladesh, in which the interim government of Muhammad Yunus navigates between the pressure of Islamist mobilization on one side and the demands of international human rights institutions on the other, in which India watches events in Bangladesh with an intensity of interest that reflects both genuine concern for the Hindu minority and the political dynamics of its own domestic politics, in which the Bangladeshi Hindu diaspora across the United Kingdom, the United States, India, and Australia has mobilized with unprecedented energy and visibility, and in which international

organizations from the United Nations Human Rights Council to Amnesty International to the United States Commission on International Religious Freedom have focused a spotlight on the treatment of Bangladesh's religious minorities, the external dimension of the reform question is not peripheral but central.

What follows is an attempt to map that external dimension with the same depth and seriousness that the earlier Parts have brought to the domestic legal analysis. The approach is simultaneously jurisprudential and political, international and comparative, theoretical and practical. The aspiration is to provide those who work for the reform of Hindu personal law in Bangladesh, whether from within the community, from within Bangladesh's civil society and legal profession, from within its government, or from the diaspora and international community, with a comprehensive intellectual framework for understanding and engaging the global dimensions of their cause.

CHAPTER ONE: THE DIASPORA AS LEGAL ACTOR: THEORY, HISTORY, AND THE EMERGING JURISPRUDENCE OF TRANSNATIONAL COMMUNITY ADVOCACY

1.1 The Theoretical Framework: Diaspora, Law, and Transnational Advocacy

The concept of the diaspora as a legal actor is one that has gained significant theoretical attention in the literature on transnational law, international human rights, and comparative legal studies over the past three decades. Earlier understandings of diaspora communities tended to treat them primarily as sociological phenomena: groups of people who had left their original homelands and settled in new countries, maintaining ties of culture, language, and sentiment with the places they had left. The legal dimension of diaspora existence was, in those earlier understandings, largely passive: diaspora communities were subject to the laws of their host countries, they sometimes maintained connections with the legal systems of their homelands through personal law doctrines or bilateral treaty arrangements, but they were not understood as agents who could significantly shape the legal development of the societies they had left behind.

That understanding has been radically revised by the experience of the late twentieth and early twenty-first centuries. Diaspora communities have emerged as powerful political actors in the domestic affairs of their countries of origin, wielding influence through financial remittances, through political lobbying in host country governments, through engagement with international human rights institutions, through media campaigns that shape international opinion, and through the direct exercise of soft power on the governments of their homelands. The Tamil diaspora played a significant role in the politics of Sri Lanka's civil war. The Irish-American diaspora was central to the peace process in Northern Ireland. The Tibetan diaspora has maintained the political identity and international visibility of the Tibetan cause through decades of Chinese occupation of Tibet. In each of these cases, the diaspora functioned not merely as a community maintaining sentimental connections with a homeland but as an organized political force capable of shaping legal and political outcomes across national borders.

The theoretical literature on this phenomenon has developed along several lines. International relations scholars working in the tradition of transnationalism, building on the foundational work of Robert Keohane and Joseph Nye on complex interdependence, have analyzed diaspora communities as components of the transnational networks that shape the behavior of states in a world where national borders no longer contain political action as effectively as they once did. Legal scholars working in the emerging field of transnational law, which owes much to the foundational work of Philip Jessup and has been further developed by thinkers like Harold Koh and Anne-Marie Slaughter, have examined the way in which diaspora communities contribute to the development of transnational legal norms, to the diffusion of legal ideas across national systems, and to the creation of what Slaughter has called "government networks" that operate above and below the level of formal international law.

For the specific question of personal law reform in diasporic origin communities, there is a particularly interesting body of comparative literature. When diaspora communities engage with the personal laws of their homelands, they do so from a distinctive position. On the one hand, they often have a deep and passionate attachment to the cultural and religious traditions that personal law is meant to express. On the other hand, many diaspora communities are settled in countries with secular civil law systems that do not discriminate on the basis of gender in matters of inheritance, marriage, or property, and diaspora members who have lived under such systems sometimes develop perspectives on personal law that are more egalitarian than those prevalent in the homeland community. The relationship between diaspora communities and personal law reform in their origin countries is therefore complex and not easily characterized as simply progressive or simply conservative.

In the case of the Bangladeshi Hindu diaspora and the question of Hindu personal law reform, this complexity is very much in evidence. Different segments of the diaspora, separated by generation, by place of settlement, by religious orthodoxy, and by political affiliation, hold very different views about what kind of reform, if any, is desirable. Understanding those differences is essential to any realistic assessment of the role the diaspora can play in the reform project.

1.2 Diaspora Advocacy and International Human Rights: The Theoretical Connection

The intersection between diaspora advocacy and international human rights mechanisms is an area that has received increasing scholarly attention in the post-Cold War period, as both transnational diaspora communities and international human rights institutions have become more prominent features of the global political landscape. The theoretical connection between these two phenomena rests on a shared normative framework: both diaspora advocacy for minority rights in origin countries and the international human rights system operate on the basis of universalist premises, the premise that human beings have rights that exist independently of the particular state in which they happen to reside, and that the international community has both the right and the responsibility to take an interest in how states treat their populations.

The relationship between diaspora advocacy and international human rights mechanisms is not, however, simply one of mutual reinforcement. There are important tensions. International human rights institutions operate, in principle, on the basis of impartial universalist standards, applying

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the same norms to all states regardless of their political or cultural character. Diaspora advocacy, by contrast, is necessarily particular: it advocates for the rights of a specific community in a specific country, and its motivations are partly general human rights concerns and partly the particular cultural and political loyalties that define diaspora identity. The risk that diaspora advocacy will become an instrument of geopolitical pressure, serving the interests of states that use minority rights rhetoric as a tool of diplomatic leverage, is a real one, as the experience of various minority rights controversies in South Asia demonstrates.

This tension is particularly acute in the case of Bangladesh's Hindu minority, where Indian interest in the situation of Bangladeshi Hindus is shaped by domestic Indian politics in ways that can complicate the principled advocacy for reform. A Part of this chapter's task is to distinguish principled, rights-based advocacy from its geopolitically instrumental simulacra, and to identify the forms of diaspora engagement that are most likely to advance genuine reform rather than to exacerbate the communal tensions that make reform more difficult.

1.3 The Legal Theory of Transnational Advocacy Networks

Margaret Keck and Kathryn Sikkink's foundational work on transnational advocacy networks provides a valuable theoretical framework for understanding how diaspora communities, international NGOs, human rights institutions, and sympathetic governments can work together to create pressure for legal reform in specific countries. The key concept in Keck and Sikkink's analysis is the "boomerang effect": when domestic groups in a country are blocked from achieving their advocacy goals through direct pressure on their own government, they reach across national borders to find international allies who can then exert external pressure on that government, effectively turning the blocked domestic advocacy into an externally reinforced demand that is harder for the government to ignore.

The boomerang model has obvious relevance to the situation of Hindu personal law reform advocates in Bangladesh. The domestic advocacy for reform has been consistently blocked by a combination of political vulnerability, communal insecurity, and the calculation of successive governments that the political costs of reform outweigh its benefits. The external turn, the reaching out to diaspora communities, international human rights institutions, sympathetic foreign governments, and global civil society, is therefore not merely a supplementary strategy but potentially the primary lever through which reform advocates can create the conditions for legislative change.

But Keck and Sikkink's model must be applied with sensitivity to the specific context of Bangladesh. The boomerang effect works most effectively when the international pressure it generates is seen as legitimate by the target government, as pressure from institutions and actors whose standing to be concerned about the issue is recognized. When international pressure is seen as politically motivated, as serving the interests of a hostile foreign state, or as an attack on national sovereignty or cultural identity, it can generate a backlash that actually makes reform more difficult. This is a real risk in the Bangladeshi context, where Indian interest in the situation of Bangladeshi Hindus is viewed with suspicion by many Bangladeshis, and where the weaponization of minority rights discourse by Hindutva nationalist politics in India has made it

more difficult to advocate for the rights of Bangladeshi Hindus from an Indian-connected platform without being accused of serving Indian geopolitical interests.

The theoretical literature on transnational advocacy therefore counsels a strategy that diversifies the sources of international pressure, drawing on multiple international actors and frameworks rather than relying primarily on India-connected diaspora advocacy. It counsels engagement with universalist international human rights institutions, with women's rights organizations in the global South, with comparative legal scholars, and with the international community of legal reformers whose concern for the rights of Hindu women in Bangladesh is grounded in gender equality principles rather than in South Asian geopolitics.

CHAPTER TWO: THE BANGLADESHI HINDU DIASPORA: GEOGRAPHY, DEMOGRAPHICS, POLITICS, AND THE ARCHITECTURE OF TRANSNATIONAL COMMUNITY

2.1 Mapping the Diaspora: Where Bangladeshi Hindus Have Gone

The Bangladeshi Hindu diaspora is not a single coherent community but a complex and geographically distributed collection of communities, each shaped by the specific circumstances of its migration and settlement. To speak of the diaspora's role in the reform project, one must first understand the geography and the diversity of this transnational community.

The largest and most politically significant diaspora destination is India. Tens of millions of people with roots in what is now Bangladesh live in India, a consequence of the partitions of 1947 and 1971 and the continuous migration driven by communal violence, economic necessity, and the gradual erosion of the Hindu community's position in Bangladesh over the decades since independence. These are not typically counted as diaspora in the conventional sense, because they are Indian citizens and their legal and political identity is Indian rather than Bangladeshi. But many maintain connections with family members still in Bangladesh, many have a passionate interest in the treatment of Bangladeshi Hindus, and many are organized into community and advocacy organizations that actively monitor and respond to developments affecting their community of origin. The Bangladesh community in West Bengal in particular, historically concentrated in Kolkata and the surrounding districts but now spread across the state, represents a powerful social and political force that has shaped West Bengali politics for decades.

The United Kingdom hosts a significant Bangladeshi-origin Hindu community, concentrated primarily in London and in other major English cities. This community is largely descended from migrants who left what is now Bangladesh, primarily East Pakistan, in the 1950s, 1960s, and 1970s, and who settled in Britain during the period when Commonwealth immigration was more freely available. The UK-based Bangladeshi Hindu community is relatively well established, largely professional and business-oriented in the second and third generations, politically engaged in British domestic politics through the Labour and Conservative parties, and

increasingly interested in the situation of those who remain in Bangladesh. Several UK-based organizations, including the British Hindu community organizations and various Bangladesh-specific advocacy groups, have been active in raising the issue of minority rights in Bangladesh in the British Parliament and in British media.

The United States hosts a growing and increasingly politically active Bangladeshi Hindu diaspora, concentrated primarily in the New York metropolitan area, in New Jersey, in Texas, and in California. American Bangladeshi Hindus include both long-established migrants and more recent arrivals, including many who left Bangladesh specifically because of communal violence or legal vulnerability. The US-based community has been particularly active in advocacy before the United States Congress, the US State Department, and the United States Commission on International Religious Freedom, which has consistently reported on the situation of religious minorities in Bangladesh. The August 2024 violence against Bangladeshi Hindus produced an unprecedented mobilization of the US-based Bangladeshi Hindu community, with demonstrations in New York, Washington DC, and other major cities, and a significant increase in lobbying activity directed at US government officials and institutions.

Australia hosts a smaller but growing Bangladeshi Hindu diaspora, concentrated primarily in Sydney and Melbourne, which has been similarly mobilized by the events of 2024 and 2025.

The Canada-based Bangladeshi Hindu community, concentrated in Toronto and Vancouver, rounds out the major diaspora communities of the Western world.

2.2 The Politics of the Diaspora: Divisions, Alliances, and Reform Advocacy

The political character of the Bangladeshi Hindu diaspora is shaped by several overlapping divisions that make any simple characterization impossible. The most important division is generational. First-generation migrants, those who left Bangladesh as adults and who carry a direct experiential memory of life in Bangladesh, tend to be the most intensely concerned with developments in Bangladesh and the most committed to advocacy for the community's rights. They also tend, in many cases, to be more socially conservative, more attached to traditional religious and cultural practices, and more ambivalent about certain aspects of personal law reform, particularly reforms that touch upon what they understand as sacred aspects of Hindu marriage and family life. Their children and grandchildren, raised in the secular legal environments of the United Kingdom, the United States, Australia, or Canada, and socialized in educational systems that emphasize gender equality and individual rights, tend to approach the question of personal law reform from a more consistently progressive perspective.

The second important division is between different ideological currents within the diaspora. The global Hindu nationalist movement, associated with organizations like the Vishwa Hindu Parishad and the Hindu Swayamsevak Sangh, has a significant presence in the Bangladeshi Hindu diaspora as in other South Asian Hindu diasporas. This movement tends to frame the situation of Bangladeshi Hindus primarily in terms of communal victimhood and Muslim aggression rather than in terms of internal reform needs, and its advocacy tends to focus on protection of the community from external violence rather than on the transformation of the

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internal legal structures that discriminate against Hindu women. For the Hindu nationalist movement, the primary enemy is communal violence and anti-Hindu discrimination, and questions of gender equality within the Hindu community are distinctly secondary, sometimes actively resisted as divisive or as serving an anti-Hindu agenda.

The progressive wing of the diaspora, including organizations like Hindus for Human Rights in the United States, takes a very different position. This current, while deeply concerned about communal violence and the persecution of Bangladeshi Hindus, also insists on the importance of internal reform, on the connection between the external vulnerability of the community and the internal discrimination against women, and on the obligation to advocate for gender equality as a core Hindu value rather than as an externally imposed standard. The 2025 statement by Hindus for Human Rights urging the Bangladeshi government to establish a Ministry of Minority Affairs, issued in December 2025 in the wake of renewed violence, reflects this dual concern: protection from external violence and internal structural reform.

Between these poles, there is a large middle ground of diaspora community members who are primarily concerned with the welfare of their families and communities in Bangladesh, who support both better protection from communal violence and some degree of legal reform, but who are not strongly ideologically committed to either the Hindu nationalist or the progressive secular framing of the issue.

2.3 Diaspora Remittances and Their Legal Significance

A dimension of diaspora engagement with Bangladesh that is often overlooked in discussions of advocacy and human rights is the economic dimension. The Bangladeshi Hindu diaspora, like all diaspora communities, maintains significant economic ties with Bangladesh through remittances, investment, property ownership, and business relationships. These economic connections have direct legal significance for questions of personal law, because property and inheritance rights under Hindu law determine, in part, what happens to the Bangladesh-based assets of diaspora members and their families.

A Hindu man in London or New York who owns property in Bangladesh, or who has elderly parents in Bangladesh who own property, has a direct personal stake in the clarity and fairness of Hindu inheritance law in Bangladesh. If his parents die intestate under the current Dayabhaga rules, the distribution of their property among heirs is governed by rules that are unclear, uncodified, and in many cases unjust, particularly to female heirs. If he has sisters who are deprived of their fair share of their parents' property by the operation of those rules, the abstract legal question of Hindu personal law reform becomes very personal and very concrete.

This economic dimension of the diaspora's stake in personal law reform has been underexplored in the advocacy literature, but it represents a potentially important source of diaspora motivation for reform. When personal law reform is understood not merely as an abstract gender equality issue but as a reform that would protect the property rights of the diaspora's own family members in Bangladesh, the case for diaspora engagement becomes immediate and practical rather than merely principled.

2.4 The Diaspora and Digital Advocacy: The Transformation of Transnational Political Communication

The role of digital media and social media in shaping the political engagement of the Bangladeshi Hindu diaspora with developments in Bangladesh has been transformed over the past decade, and with particular speed and intensity since August 2024. The violence against Bangladeshi Hindus in August 2024 and the continuing reports of atrocities in the months that followed were documented and disseminated across the diaspora through YouTube channels, Facebook groups, WhatsApp networks, Instagram accounts, X (formerly Twitter), and other social media platforms with a speed and comprehensiveness that no previous communications technology had made possible.

The consequences of this transformation for the politics of advocacy are profound. Diaspora communities that were previously dependent on occasional reports from relatives or on the coverage of mainstream media now have access to a continuous, real-time stream of information about events in Bangladesh, much of it supplied by community members on the ground who are using smartphones to document and share what is happening around them. This creates a sense of immediacy and emotional engagement with events in Bangladesh that was not available to earlier generations of diaspora members, and that has driven a significant increase in diaspora political mobilization.

At the same time, the digital information environment carries well-recognized risks of misinformation, manipulation, and inflammatory framing. The events of August 2024 were accompanied by a flood of social media content about violence against Bangladeshi Hindus, some of which accurately documented real atrocities and some of which involved exaggerated claims, misidentified photographs from other countries and contexts, and deliberate disinformation campaigns by politically motivated actors. The challenge for diaspora advocacy that seeks to be both effective and responsible is to engage with this digital environment without being captured by its worst tendencies: to use the power of digital communication to document real injustice and mobilize real advocacy without amplifying misinformation or contributing to the communal polarization that makes genuine reform more difficult.

CHAPTER THREE: THE INDIA DIMENSION: BILATERAL RELATIONS, THE MINORITY RIGHTS QUESTION, AND THE ROLE OF INDIAN INTEREST IN THE REFORM DEBATE

3.1 India's Structural Interest in the Situation of Bangladeshi Hindus

No examination of the international dimensions of Hindu personal law reform in Bangladesh can avoid the central and enormously complex question of India's role. India is Bangladesh's largest neighbor, its most important bilateral relationship, its primary trading partner, and the country to which most Bangladeshi Hindu migrants have historically fled when communal violence or economic pressure became intolerable. India is also a country whose domestic politics is deeply

shaped by the Hindu nationalist movement, a movement that has made the situation of Hindus in Bangladesh a prominent political issue particularly in West Bengal and in the national politics of the Bharatiya Janata Party. The relationship between genuine concern for the human rights of Bangladeshi Hindus and the instrumentalization of that concern in Indian domestic politics is one of the most delicate and difficult issues in the entire landscape of minority rights advocacy in South Asia.

Indian interest in the situation of Bangladesh's Hindu minority is real, deep, and structurally grounded. It is real because millions of Indian citizens have family connections with the Bangladeshi Hindu community, because the political identity of West Bengal in particular is deeply tied to the memory of partition and to solidarity with those who remained behind, and because the Hindu nationalist movement has made the protection of Hindus worldwide a central element of its political program. It is deep because the historical experience of partition, with its massive displacement of Hindu communities from East Bengal, has left a wound in collective memory that is still alive in the politics of the region. And it is structurally grounded because India's calculations of its own geopolitical interests in South Asia include concern about demographic trends in Bangladesh that might increase migration pressure on India's northeastern border regions.

At the same time, India's engagement with the situation of Bangladeshi Hindus is shaped by domestic political interests that can distort principled rights advocacy into something less admirable. The Bharatiya Janata Party government under Narendra Modi has consistently used the situation of Bangladeshi Hindus as a political tool, both in its domestic politics, particularly in West Bengal, and in its relations with Bangladesh. The political narrative in which Bangladeshi Hindus are primarily victims of Muslim aggression in a fundamentally Islamic society, a narrative that serves BJP's Hindu nationalist political agenda, is a simplification that obscures the complex, multidimensional nature of the situation and that can actually make it harder to address the real legal and structural problems that confront the community. When India's External Affairs Minister stands up in the Lok Sabha to report on the number of incidents of anti-Hindu violence in Bangladesh, he is simultaneously drawing attention to a real problem and using that problem for domestic political purposes that are at best only partially aligned with the goal of genuine reform.

The relationship between the Indian government and the situation of Bangladeshi Hindus has also been complicated by the political history of the Hasina era. Sheikh Hasina's government, which maintained very close relationships with India, was in many ways instrumentally friendly to the Hindu community as part of its broader strategy of maintaining Indian political support while doing relatively little to actually improve the community's legal situation. India, for its part, was generally reluctant during the Hasina period to push too hard on minority rights issues that might embarrass its closest ally in Dhaka. The result was a dynamic in which Indian concern for Bangladeshi Hindus was deployed rhetorically when convenient and suppressed when it was not, while the actual legal situation of the community remained unreformed.

3.2 The Post-August 2024 Deterioration of India-Bangladesh Relations and Its Implications

The fall of Sheikh Hasina's government in August 2024 inaugurated a period of significant deterioration in India-Bangladesh relations. The interim government under Muhammad Yunus was formed in a context in which anti-India sentiment was a significant element of the popular mobilization that had just toppled the Hasina government, which was widely seen as having been excessively pro-India at the expense of Bangladesh's national interests. The new government's relationship with India was complicated from the outset by the fact that Hasina had fled to India, where she was given shelter by the Indian government, and by the new government's evident desire to assert Bangladesh's independence from Indian influence.

India's response to the August 2024 violence against Bangladeshi Hindus was, from the perspective of the Bangladeshi Hindu community, deeply inadequate. While Indian political figures and media gave extensive attention to the violence, the Indian government's actual diplomatic interventions were measured and cautious, reflecting India's unwillingness to press too hard on a government with which it needed to maintain workable relations. India's foreign secretary visited Dhaka in December 2024 and raised the issue of minority protection, but the visit produced no concrete commitments and was followed by the Bangladeshi government's statement that it had arrested 77 people in connection with cases of violence against Hindus, a response that the Hindu community organizations and independent observers considered wholly inadequate to the scale of the documented abuses.

The deterioration of India-Bangladesh relations has created a paradox for the reform project. On the one hand, it has increased the urgency and visibility of the situation of Bangladeshi Hindus in international discourse. On the other hand, it has made the association between advocacy for Bangladeshi Hindu rights and Indian geopolitical interests more visible and more problematic, increasing the risk that advocacy will be dismissed by the Bangladesh government and by many Bangladeshi Muslims as Indian interference in Bangladesh's internal affairs. This is the structural dilemma that any external advocacy for the rights of Bangladesh's Hindu minority, and specifically for the reform of Hindu personal law, must navigate: how to be effective without being co-opted by geopolitical interests that ultimately care more about bilateral relations than about the rights of Hindu women in Bangladesh.

3.3 India's Own Hindu Law Reform as a Model and a Resource

One dimension of India's relevance to the Hindu personal law reform project in Bangladesh that deserves careful examination is not primarily diplomatic or political but legal and intellectual: the experience of India's own Hindu law reform, completed in the 1950s and extended in important ways in 2005 and subsequently, as a model for and resource in the Bangladeshi reform project.

The argument that Bangladesh should follow the Indian path, reforming Hindu personal law through comprehensive codification in the manner of India's Hindu Marriage Act of 1955 and Hindu Succession Act of 1956, has been made by many reform advocates and has been examined in detail in earlier Parts of this treatise. For the present chapter, the relevant question is

the comparative and international dimension of this argument: what does India's experience with Hindu law reform tell us about how reform can be achieved in the face of religious conservative resistance, political inertia, and the complex intersection of gender, religion, and community identity?

The Indian experience offers several lessons that are directly relevant to the Bangladeshi context. The first lesson is about leadership: India's Hindu code reform was ultimately achieved because of the determined personal commitment of Jawaharlal Nehru as Prime Minister and B.R. Ambedkar as Law Minister, leaders who understood reform as a matter of national identity and constitutional principle and who were willing to invest significant political capital in pursuing it over fierce resistance. The second lesson is about the power of constitutional principle: the argument that discrimination against women in personal law was incompatible with the constitutional commitments to equality and non-discrimination ultimately proved politically decisive in India, as it can and should in Bangladesh. The third lesson, perhaps the most important for the current context, is about the importance of sequencing: India's reform was not a single comprehensive act but a series of carefully calibrated legislative interventions, each addressing a specific injustice, each building on the previous one, and each designed to be as politically achievable as possible at the time while also constituting genuine progress toward the larger goal of substantive gender equality.

The Vineeta Sharma case decided by the Supreme Court of India in 2020, giving daughters equal rights with sons in ancestral property and applying the 2005 amendment to the Hindu Succession Act retrospectively, represents the most recent significant development in India's Hindu law jurisprudence. Its significance for the Bangladeshi reform project is twofold: it demonstrates that the direction of travel in Hindu law reform, even in a country with powerful Hindu conservative political forces, is consistently toward greater gender equality; and it provides a set of legal arguments and principles that Bangladeshi reformers can cite and build upon in their own advocacy.

CHAPTER FOUR: THE INTERNATIONAL HUMAN RIGHTS ARCHITECTURE AND ITS APPLICATION TO HINDU PERSONAL LAW IN BANGLADESH

4.1 The Treaty Body System: An Overview of Bangladesh's Obligations

Bangladesh is a state party to a significant number of international human rights treaties, and the obligations those treaties impose bear directly on the question of Hindu personal law reform. Understanding those obligations, and understanding the mechanisms through which the treaty bodies that monitor compliance with those obligations can be engaged in support of the reform project, is an essential component of any comprehensive strategy for reform.

The most directly relevant treaties are the Convention on the Elimination of All Forms of Discrimination Against Women, which Bangladesh ratified in 1984; the International Covenant on Civil and Political Rights, which Bangladesh ratified in 2000; the International Covenant on

Economic, Social and Cultural Rights, which Bangladesh ratified in 1998; the Convention on the Rights of the Child, which Bangladesh ratified in 1990; and the International Covenant against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Each of these treaties generates reporting obligations, and each is monitored by a treaty body that reviews state party reports and issues concluding observations that assess the state's compliance with its obligations.

The treaty body system is not a court, and its concluding observations are not legally binding in the same sense as the judgments of a domestic court or even of an international court like the International Court of Justice. But the political and moral weight of treaty body recommendations is significant, particularly in states that value their international reputation and that are seeking greater integration into international economic and diplomatic networks. For the Bangladeshi government of Muhammad Yunus, which has stated its commitment to international standards and has sought engagement with international financial institutions and diplomatic partners, the recommendations of treaty bodies carry genuine weight. Reform advocates can use the treaty body process strategically, both by submitting shadow reports that document the deficiencies of Hindu personal law and by engaging with the treaty bodies' concluding observations in their domestic advocacy, citing international recommendations as additional grounds for the legislative changes they are seeking.

4.2 The CEDAW Committee and Hindu Personal Law: Analysis of State Party Obligations

The Convention on the Elimination of All Forms of Discrimination Against Women represents the most comprehensive and most directly applicable international legal instrument for the question of Hindu personal law reform in Bangladesh. CEDAW's central obligation, set out in Article 2, is that state parties condemn discrimination against women in all its forms and agree to pursue, by all appropriate means and without delay, a policy of eliminating discrimination against women. This obligation is not conditioned on the consent of any particular religious community or on the compatibility of non-discrimination requirements with any particular religious or cultural tradition. It is an absolute obligation of the state.

Article 16 of CEDAW is specifically directed at family law: it requires state parties to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and to ensure, on a basis of equality of men and women, certain specific rights including the right to enter into and dissolve marriage, the same rights and responsibilities as spouses, the same rights and responsibilities as parents, and the same personal rights as husband and wife. Article 15 requires equal rights of women and men in matters of civil law, including the administration and management of property and equal treatment in all stages of legal proceedings.

The application of these provisions to Hindu personal law in Bangladesh is straightforward. The denial of equal inheritance rights to Hindu women under the Dayabhaga system is a direct violation of the principle of non-discrimination in matters of property administration and management. The absence of any legal mechanism for the dissolution of Hindu marriages violates the requirement of equality in rights to dissolve marriage. The rules of guardianship that

privilege male relatives over mothers in matters affecting Hindu children violate the requirement of equal rights and responsibilities as parents.

Bangladesh's reservations to CEDAW complicate but do not eliminate these obligations. Bangladesh entered reservations to Article 2 and Article 16(1)(c) of CEDAW, stating that these provisions conflict with certain aspects of Islamic law. The reservations, on their face, apply only to Islamic law and not to Hindu personal law, which means that the argument that CEDAW obligations do not apply to Hindu personal law because of these reservations cannot be sustained: the reservations speak only to Islamic law, and there is no reservation that purports to exempt Hindu personal law from CEDAW's requirements.

The CEDAW Committee has addressed personal law discrimination in multiple concluding observations on Bangladesh. The Committee has consistently expressed concern about discriminatory provisions in the personal laws of non-Muslim communities in Bangladesh, including Hindu personal law, and has called on Bangladesh to take steps to ensure that the personal laws of all communities comply with CEDAW's requirements. In its most recent periodic review, the Committee noted the lack of legislative reform of Hindu personal law and called on Bangladesh to take measures to ensure equal inheritance rights for Hindu women, to introduce a mechanism for divorce under Hindu law, and to reform the rules of guardianship to ensure the equal status of mothers.

The CEDAW Committee's engagement is not a mechanism that by itself produces legal change: states have routinely ignored CEDAW Committee recommendations for extended periods without consequences in any conventional legal sense. But CEDAW Committee recommendations are powerful tools in the hands of domestic reform advocates. They shift the burden of argument: rather than reformers having to persuade a skeptical government and public that reform is desirable, the government is in the position of having to explain why it has not implemented the recommendations of the body that monitors its compliance with its own treaty obligations. They provide authoritative international endorsement for specific reform proposals, which strengthens the credibility and the political weight of those proposals in domestic advocacy. And they create a record of international concern that can be cited in litigation, in parliamentary debate, and in civil society advocacy.

4.3 Bangladesh's CEDAW Reservations: A Jurisprudential Examination

Bangladesh's reservations to CEDAW Articles 2 and 16(1)(c) are worth examining in more detail, both for their substantive content and for their jurisprudential significance. Article 2 is the core non-discrimination provision; it commits state parties to condemning discrimination against women in all its forms and to pursuing elimination of discrimination by all appropriate means. Bangladesh's reservation states that it accepts this provision insofar as it is not contrary to the provisions of the Islamic Shariah. Article 16(1)(c) concerns equal rights and responsibilities during marriage and at its dissolution. Bangladesh's reservation similarly subjects its acceptance to compatibility with Shariah law.

The scope of these reservations is limited in an important way: they explicitly refer to Islamic Shariah, not to any other religious legal system. They therefore cannot be read as reserving the right to maintain discriminatory provisions in Hindu personal law. This point, which has been made by the CEDAW Committee and by academic commentators, is significant for the reform project: the Bangladesh government cannot invoke its CEDAW reservations as a justification for the failure to reform Hindu personal law. The reservations are about Islamic law; they say nothing about Hindu law.

More broadly, the validity of Bangladesh's CEDAW reservations has been contested by the CEDAW Committee and by international human rights scholars. The CEDAW Committee has taken the position that reservations that are incompatible with the object and purpose of the Convention are impermissible under general international law, as reflected in Article 19 of the Vienna Convention on the Law of Treaties. The Committee has specifically identified Bangladesh's reservations to Articles 2 and 16(1)(c) as being incompatible with the object and purpose of CEDAW, because these articles are central to the Convention's purpose of eliminating discrimination against women. The Committee has repeatedly called on Bangladesh to withdraw these reservations.

Human Rights Watch and other international organizations joined in 2025 and 2026 calls on the Bangladesh government to withdraw its remaining CEDAW reservations. The Women's Affairs Reform Commission established by the interim government, which recommended steps including criminalizing marital rape, providing equal parental rights for women, and reforming inheritance laws, represents a potential opening for broader reform that could include withdrawal of the CEDAW reservations.

The jurisprudential significance of the reservations controversy extends beyond the specific question of Bangladesh's compliance. It engages fundamental questions in international human rights law about the nature of treaty obligations, the permissibility of reservations, and the relationship between universal human rights norms and culturally particular legal systems. These are questions that have been extensively debated in the international human rights literature, and the resolution of those debates has important implications for the reform project.

4.4 The ICCPR, the Human Rights Committee, and the Rights of Bangladesh's Hindu Women

The International Covenant on Civil and Political Rights, to which Bangladesh has been a party since 2000, contains several provisions of direct relevance to the question of Hindu personal law reform. Article 2 requires state parties to ensure the rights recognized in the Covenant to all individuals within their territory without distinction of any kind, including on grounds of sex, religion, or other status. Article 3 requires state parties to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the Covenant. Article 17 protects against arbitrary interference with family life. Article 18 protects freedom of religion. Article 23 specifically addresses the right to marry and provides that no marriage shall take place without the free and full consent of the intending spouses, that states shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, and that states shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to dissolution

of marriage. Article 26 provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.

The Human Rights Committee, which monitors compliance with the ICCPR, has developed a rich jurisprudence on the application of these provisions to personal law discrimination. In its General Comment 28 on the equality of rights between men and women, the Committee stated that states must ensure that traditional, historical, religious, or cultural attitudes are not used to justify violations of women's right to equality before the law and to equal enjoyment of all Covenant rights. The Committee's General Comment 18 on non-discrimination provides that the principle of non-discrimination requires that each state party take the necessary steps to enable every person to enjoy those rights on an equal basis with others, including, where necessary, affirmative action.

The application of these principles to the situation of Hindu women in Bangladesh is clear: the denial of equal inheritance rights, the absence of divorce, the inferior guardianship status of mothers, and the other discriminatory features of Hindu personal law constitute violations of Bangladesh's ICCPR obligations. The Human Rights Committee's periodic review of Bangladesh's compliance with the ICCPR is therefore another international mechanism that reform advocates can engage strategically, both by submitting information about the specific deficiencies of Hindu personal law and by working to ensure that the Committee's concluding observations specifically address those deficiencies.

CHAPTER FIVE: THE UNIVERSAL PERIODIC REVIEW: PROCESS, PRACTICE, AND ITS POTENTIAL FOR HINDU LAW REFORM ADVOCACY

5.1 The UPR Mechanism: How It Works and Why It Matters

The Universal Periodic Review, established by the Human Rights Council in 2006 as part of the comprehensive reform of the United Nations human rights system, represents one of the most innovative mechanisms in international human rights law. Unlike the treaty body system, which monitors compliance only with treaties to which a state is party, the UPR applies to all 193 member states of the United Nations. Every state is reviewed on a regular cycle, currently every four and a half years, and the review covers the state's compliance with all of its human rights obligations, including obligations under the UN Charter, obligations under treaties it has ratified, and commitments it has voluntarily made.

The UPR process involves three stages. In the first stage, the state being reviewed submits a national report describing its human rights record and the steps it has taken to fulfill its human rights obligations. In the second stage, a working group of the Human Rights Council, comprising the full membership of the Council, meets to review the state's report along with reports from the United Nations treaty bodies and other UN bodies, and a summary of information submitted by civil society organizations. In the third stage, the working group adopts

a report containing an outcome document that includes recommendations made to the state by other states during the review.

The UPR is not a judicial process, and the recommendations made by states in the course of the review are not legally binding. However, the political significance of UPR recommendations is substantial. States that receive recommendations in the UPR are expected to indicate whether they accept or reject those recommendations, and their follow-up on accepted recommendations is monitored in subsequent review cycles. The process creates a record of international concern that carries political weight, particularly for governments that value their international standing.

For the specific question of Hindu personal law reform in Bangladesh, the UPR process has already been engaged, albeit imperfectly. In previous UPR cycles, several states and civil society organizations have raised concerns about the situation of religious minorities in Bangladesh, including concerns about discriminatory personal law provisions affecting non-Muslim communities. The recommendations have typically been framed in general terms, calling on Bangladesh to ensure equal rights for all citizens regardless of religion, without specifically addressing the details of Hindu personal law. There is significant scope for civil society advocacy to produce more specific and focused UPR recommendations in future review cycles.

5.2 Civil Society Participation in the UPR and Its Strategic Significance

The most important feature of the UPR from the perspective of reform advocates is the provision for civil society participation. Non-governmental organizations, civil society groups, national human rights institutions, and other stakeholders can submit written contributions to the UPR process, and these contributions are compiled by the Office of the United Nations High Commissioner for Human Rights and made available to the working group as part of the documentation for the review. Civil society organizations can also attend the review sessions as observers and can organize parallel events at the margins of the Human Rights Council sessions to draw attention to specific issues.

The practical implications of this participation provision for Hindu personal law reform advocacy are significant. A well-organized coalition of Bangladeshi civil society organizations, international human rights NGOs, and diaspora community organizations could submit a comprehensive shadow report to the UPR process that documents in specific detail the deficiencies of Hindu personal law in Bangladesh, the ways in which those deficiencies violate Bangladesh's international human rights obligations, and the specific reforms that would be necessary to bring Bangladesh's law into compliance. Such a report, if it is well-documented, clearly argues its legal and human rights grounds, and achieves wide circulation in the international human rights community, can significantly strengthen the case for reform in the diplomatic and political arena.

The submission of such a shadow report would also serve an important domestic advocacy function. The process of compiling the report would require the coalition of civil society organizations to develop a shared, detailed, and legally rigorous understanding of the specific deficiencies they are seeking to reform, which would strengthen the coherence and credibility of

their domestic advocacy. The publication of the report, and any international response to it, would create a record of documented concern that reform advocates can cite in their interactions with the government, the judiciary, and the legislature.

5.3 Bangladesh's UPR Record and the Minority Rights Question

Bangladesh has undergone several UPR cycles since the mechanism was established in 2006. In each cycle, concerns about the situation of religious minorities, including Hindus, have been raised by multiple states and civil society organizations. The Bangladesh government's responses to these concerns have typically acknowledged the existence of challenges while denying their severity, pointing to constitutional provisions guaranteeing equality and non-discrimination as evidence of a satisfactory legal framework, and promising continued progress on minority rights without committing to specific legislative reforms.

The gap between Bangladesh's UPR commitments and its actual performance on minority rights, particularly on the question of personal law reform, has been a consistent feature of the reviews. In the 2018 UPR review, Bangladesh received recommendations related to minority rights from multiple states. Several of these recommendations specifically addressed the need to ensure equality in personal law for non-Muslim communities. Bangladesh supported several of these recommendations but took no concrete legislative action in the period following the review. The 2023 UPR review cycle took place against the backdrop of increasing documentation of violence against minorities and the advocacy of the Hindu Buddhist Christian Unity Council for personal law reform. Civil society organizations submitted shadow reports documenting specific concerns about Hindu personal law, and several states made recommendations specifically addressing the need for reform. The Bangladesh government's response was again to point to constitutional equality provisions and to promise progress without committing to a timeline or specific legislative action.

The most recent UPR cycle, taking place in the context of the post-August 2024 political landscape, represents a critical opportunity for more focused and effective advocacy. The scale of the documented violence against Hindus and other minorities following the August 2024 revolution brought unprecedented international attention to the situation of Bangladesh's religious minorities, and that attention created a political moment in which more specific and more demanding UPR recommendations were achievable. Reform advocates should use this window of enhanced international attention to push for UPR recommendations that go beyond general calls for equality and specifically address the need for codification and reform of Hindu personal law.

CHAPTER SIX: THE UN SPECIAL PROCEDURES AND THE DOCUMENTATION OF MINORITY RIGHTS VIOLATIONS IN BANGLADESH

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6.1 The System of Special Procedures: Mandate-Holders and Their Functions

The United Nations system of special procedures comprises a significant network of independent experts appointed by the Human Rights Council to monitor, report, and advise on human rights situations in specific countries or on specific thematic human rights issues. Mandate-holders include Special Rapporteurs, Independent Experts, and Working Groups, each appointed to address a specific human rights issue or country situation. The special procedures system is one of the most active and visible components of the international human rights machinery, generating hundreds of reports, country visits, and communications each year.

Several special procedures mandates are directly relevant to the situation of Hindu women under Bangladesh's personal law system. The Special Rapporteur on Freedom of Religion or Belief monitors situations worldwide in which individuals face discrimination or persecution on the basis of their religion, and has the authority to conduct country visits, issue public statements, transmit communications to governments about specific cases, and report to the Human Rights Council. The Special Rapporteur on Violence Against Women and Girls monitors situations worldwide in which women face discrimination, violence, and inequality, including as a result of discriminatory laws and legal systems. The Independent Expert on Minority Issues monitors the situation of minority communities worldwide and reports on issues including legal discrimination against minority communities. The Special Rapporteur on the Right to Adequate Housing has been active in documenting land dispossession affecting Bangladesh's Hindu community.

Each of these mandate-holders has the authority to communicate directly with the Bangladesh government about specific cases and systemic concerns, to request and conduct country visits, and to include findings and recommendations about Bangladesh in their reports to the Human Rights Council. For the reform project, engagement with the special procedures system offers several strategic opportunities: to document specific cases of injustice resulting from discriminatory Hindu personal law, to draw international attention to the systemic character of the discrimination, and to generate authoritative international findings and recommendations that can be used in domestic advocacy.

6.2 The OHCHR Fact-Finding Report on the 2024 Bangladesh Violence

In February 2025, the Office of the United Nations High Commissioner for Human Rights published a fact-finding report on human rights violations related to the protests of July and August 2024 in Bangladesh. This report, which documented in considerable detail the violence against minority communities including Hindus in the aftermath of Sheikh Hasina's fall, represented a significant moment in the international engagement with Bangladesh's minority rights situation.

The OHCHR report found that violence against Hindus and other minorities in the period following August 4, 2024 was motivated by a combination of "religious and ethnic discrimination, revenge against Awami League supporters, local communal disputes over land and interpersonal issues." This characterization, which attributes the violence to multiple

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overlapping causes rather than purely to religious or communal hostility, reflects the complexity of the situation that has been discussed at various points in this treatise. For the purposes of the international advocacy dimension, the significance of the OHCHR report is its authoritative documentation of a pattern of violations that creates a case for international attention and engagement.

The OHCHR report's finding that land disputes and property issues played a significant role in the violence against Hindus has direct implications for the personal law reform agenda. When Hindu property rights are insecure, whether because of discriminatory succession law, unresolved vested property issues, or the practical vulnerabilities of Hindu women who have no inheritance rights, the community as a whole is more exposed to the kind of property-grabbing violence that the OHCHR documented. The connection between personal law reform and the broader security situation of the Hindu community, a theme that has been developed throughout this treatise, receives authoritative international endorsement in the OHCHR report's findings.

6.3 Engaging the Special Procedures: Practical Strategies for Reform Advocates

The engagement of special procedures mandate-holders in support of the Hindu personal law reform project requires both strategic thinking and practical knowledge of how the special procedures system works. The most important practical points are as follows.

First, mandate-holders welcome information from civil society organizations and can be approached directly with documentation of specific cases and systemic concerns. The preparation of well-documented case files showing the human consequences of discriminatory Hindu personal law, whether in terms of widows deprived of inheritance rights, women unable to escape abusive marriages because no divorce mechanism exists, or mothers denied custody of their children because of discriminatory guardianship rules, provides mandate-holders with the specific information they need to raise concerns about Bangladesh's compliance with its international obligations.

Second, mandate-holders can and do make country visits, during which they meet with government officials, civil society organizations, affected communities, and other relevant actors. A request for a country visit by the Special Rapporteur on Freedom of Religion or Belief or the Special Rapporteur on Violence Against Women, specifically focused on the situation of religious minority women under discriminatory personal law, would be a valuable tool for focusing international attention on the specific dimensions of the problem that personal law reform is meant to address.

Third, mandate-holders regularly submit communications to governments about specific cases of concern. When individual cases of injustice resulting from discriminatory Hindu personal law are documented and communicated to relevant mandate-holders, those mandate-holders can transmit official communications to the Bangladesh government requesting a response. The government's response, or failure to respond, becomes part of the public record of the international human rights system and can be used by domestic reform advocates.

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CHAPTER SEVEN: COMPARATIVE LESSONS I: THE SOUTH ASIAN REGIONAL EXPERIENCE OF HINDU LAW REFORM

7.1 The South Asian Region as a Laboratory of Legal Comparison

South Asia is, from the perspective of comparative Hindu law, an extraordinarily rich laboratory. The region contains the world's largest Hindu population, distributed across India, Nepal, Bangladesh, Sri Lanka, and the diaspora communities of Mauritius, Trinidad, Fiji, and other countries, and each of these jurisdictions has addressed the question of Hindu personal law in ways that reflect both the universal principles of gender equality and the specific historical, political, and religious contexts of each country. The comparative study of these different national experiences provides Bangladesh's reform advocates with a rich repertoire of models, arguments, and cautionary lessons that can inform their own reform strategy.

The comparative approach has been a consistent thread throughout this treatise, but this chapter addresses it from an explicitly international and transnational perspective. What can the international community of Hindu law scholars, practitioners, and reformers contribute to the Bangladeshi reform project? And how can the international experience be communicated to Bangladeshi policymakers and civil society in ways that are persuasive rather than alienating?

7.2 India's Hindu Code Reform: The Legislative Achievement and Its Limits

The story of India's Hindu code reform in the 1950s has been told in earlier Parts of this treatise in the context of the specific legal reforms that the Hindu Marriage Act, the Hindu Succession Act, and the related legislation accomplished. For the present chapter, the focus is on the international and comparative significance of that reform experience, and on what it tells us about how comprehensive personal law reform can be achieved in a democratic polity against the resistance of religious conservatives.

The international significance of India's Hindu code reform is substantial. It was one of the first comprehensive statutory reforms of a major religious personal law system in the post-colonial world, and it demonstrated that such reform was possible even in a country with a large and politically active religious conservative movement. The methodology of reform that India adopted, comprehensive statutory codification through a series of carefully drafted legislative instruments, each addressing a specific domain of personal law, became a model that has influenced personal law reform movements across South Asia and beyond.

The Indian reform also demonstrated the importance of the constitutional dimension. The Supreme Court of India's decisions upholding the Hindu Marriage Act and the Hindu Succession Act against challenges based on religious freedom and cultural autonomy established the principle that the state's constitutional obligation to ensure gender equality takes precedence over claims to maintain discriminatory religious personal law. This constitutional jurisprudence is directly relevant to the Bangladeshi context, where similar challenges to any future reform

legislation can be anticipated and where the arguments developed by Indian courts provide a template for the constitutional defense of reform.

The limits of the Indian reform are also instructive for Bangladesh. Despite the comprehensive character of the 1950s legislation, significant elements of gender inequality persisted in Indian Hindu law for decades. The discrimination against daughters in ancestral property under the Mitakshara coparcenary system was not addressed until the 2005 amendment to the Hindu Succession Act. The Supreme Court's decision in Vineeta Sharma in 2020, giving daughters equal rights with sons in ancestral property and applying the amendment retrospectively, demonstrated both the continuing relevance of the legislative reform project and the role that sustained judicial engagement can play in pushing reform toward its logical conclusion.

The lesson for Bangladesh is that comprehensive reform, once achieved, is not an endpoint but a beginning. The ongoing process of judicial interpretation, further legislative adjustment, and the gradual transformation of social norms that follows legislative reform is as important as the initial act of legislation. Bangladesh's reform advocates must plan not just for the achievement of initial legislative reform but for the sustained engagement with the legal system that will be necessary to ensure that reform actually changes the lives of Hindu women over time.

7.3 Nepal's National Civil Code of 2017: The Unified Approach

Nepal's approach to personal law reform has been, in some respects, more radical than India's. The National Civil Code of 2017, which replaced the previous Muluki Ain and established a largely unified civil code governing personal law matters across different communities, represents an approach to the diversity of religious personal law that differs fundamentally from both the Indian model of community-specific codification and the Bangladeshi status quo of unreformed ancient law.

Nepal's decision to move toward a unified civil code governing personal matters across religious communities rather than maintaining separate personal law systems for different religious groups reflects a particular constitutional philosophy. The constitutional framework of the Federal Democratic Republic of Nepal established a secular state in which the explicit preference is for a legal system that applies equally to all citizens regardless of their religious identity. The National Civil Code, in this framework, is an expression of constitutional secularism applied to the domain of personal law.

For Bangladesh, which has a different constitutional tradition, the Nepali model is not directly replicable. Bangladesh's constitution makes Islam the state religion, and the existing framework of Muslim personal law, which is at least partially codified and partially reformed, is embedded in the constitutional and political order in ways that make a simple move to a unified secular civil code politically impossible in the immediate term. But Nepal's experience is relevant as a demonstration of what a more thoroughgoing form of personal law reform looks like, and as a potential long-term aspiration that can inform the direction of incremental reforms in Bangladesh.

The specific provisions of Nepal's National Civil Code relating to inheritance and family property are particularly instructive for the Bangladeshi reform project. The Code establishes equal inheritance rights for daughters and sons, for widows and widowers, and for adopted and biological children. It provides a comprehensive framework for the dissolution of marriage that applies to all citizens regardless of religious affiliation. It establishes equal rights of parents in matters of guardianship and custody. These specific provisions, and the legislative drafting techniques employed in the Code, can inform the drafting of Bangladesh's own reform legislation.

Nepal's legal reform was partly enabled by the political upheaval of the Maoist revolution and the subsequent transition to a federal democratic republic, a political transformation that created a constitutional moment in which fundamental legal change became possible. Bangladesh's own political moment, the August 2024 revolution and the constitutional reform process it has initiated, presents a potentially analogous opportunity that reform advocates must seize.

7.4 Sri Lanka's Hindu Personal Law: Parallel Problems and Partial Solutions

Sri Lanka presents a particularly interesting comparative case for Bangladesh's Hindu personal law situation because it shares several structural features: a majority non-Hindu population, a significant Hindu minority whose personal law has been shaped by British colonial legal practice, a legal system descended from the common law tradition, and a political environment in which minority rights are subject to the complex pressures of communal politics.

Sri Lanka's Hindu minority, primarily Tamil Hindus concentrated in the Northern and Eastern provinces, is governed by Tesawalamai, a customary law system that originated in the Dutch colonial period and was modified during the British colonial period. Tesawalamai governs property and succession among Jaffna Tamils, and it has been the subject of significant academic analysis and some degree of reform debate in Sri Lanka. The Sri Lankan experience of managing a Hindu minority personal law system under a majority-Buddhist democratic government offers both parallels and contrasts with the Bangladeshi situation.

The parallels include the basic structural problem of a minority personal law system that has not been reformed since the colonial period, the political difficulty of initiating reform of a minority community's personal law in a context where the minority is politically vulnerable, and the tension between the demands of international human rights law and the political resistance to reform within the minority community itself. The contrasts include the different histories of communal relations in Sri Lanka and Bangladesh, the different legal content of Tesawalamai and the Dayabhaga rules, and the different political contexts in which reform debates are taking place.

Sri Lanka's experience of the Tamil diaspora's engagement with Tamil rights issues is also relevant to the Bangladesh comparison. The Tamil diaspora in the United Kingdom, Canada, Australia, and other countries has been a significant factor in the international attention to Tamil rights in Sri Lanka, including in the post-civil war accountability and reconstruction discussions. The strategies and mechanisms through which the Tamil diaspora has engaged with international

human rights institutions, foreign governments, and international civil society provide both a model and a cautionary lesson for the Bangladeshi Hindu diaspora's engagement on behalf of their community.

CHAPTER EIGHT: COMPARATIVE LESSONS II: HINDU DIASPORA COMMUNITIES AND PERSONAL LAW IN MAURITIUS, FIJI, TRINIDAD, AND MALAYSIA

8.1 The Comparative Significance of Hindu Diaspora Personal Law

The story of Hindu personal law is not confined to South Asia. Indian indentured laborers and voluntary migrants carried Hindu cultural and legal traditions to Mauritius, Fiji, Trinidad and Tobago, Guyana, Malaysia, Singapore, South Africa, and other destinations across the globe during the colonial period, and the descendants of those migrants continue to maintain Hindu religious and cultural identities in their countries of settlement. The question of how Hindu personal law has been treated in these diaspora jurisdictions, and what the experience of Hindu communities in those jurisdictions tells us about the possibilities and limits of personal law reform, is directly relevant to the Bangladeshi discussion.

8.2 Mauritius: The Hindu Majority Diaspora State and Its Family Law

Mauritius is the unique case of a country in which Hindus constitute a plurality and indeed roughly half of the population, a consequence of the large-scale importation of Indian indentured labor in the nineteenth century, and in which the political elite has been substantially Hindu for most of the post-independence period. The treatment of Hindu personal law in Mauritius therefore reflects a very different political calculation than the treatment of Hindu personal law in Bangladesh, where Hindus are a vulnerable minority.

Mauritius enacted the Hindu Personal Law Act in 1954, which provided a statutory framework for certain aspects of Hindu personal law including marriage and succession. The Act was subsequently amended and supplemented by other legislation, and the overall trajectory of Mauritian Hindu personal law has been in the direction of increasing codification and modernization, driven in part by the political influence of the Hindu community and in part by the general direction of Mauritian law toward greater gender equality.

The Mauritian experience is relevant for several reasons. It demonstrates that statutory codification of Hindu personal law in a common law jurisdiction with a colonial legal heritage is entirely feasible. It provides a model of how traditional Hindu legal concepts can be adapted to the requirements of a modern statutory framework without being simply abolished. And it demonstrates that Hindu community leaders, when their community has political power, can support rather than resist reform of the personal law that governs their community.

8.3 Fiji: The Crisis of Hindu Personal Law in a Context of Political Instability

Fiji presents a more troubled comparative case. The substantial Indian-origin Hindu community in Fiji, descendants of indentured laborers brought by the British in the late nineteenth century, maintained a distinct cultural and legal identity for many generations. But the series of military coups beginning in 1987, each driven in part by ethnic Fijian nationalism directed against the Indian-origin community, progressively undermined the political and legal security of Fijian Hindus and resulted in large-scale emigration that has dramatically reduced the Hindu community's share of the Fijian population.

The Fijian case is a sobering reminder that the security of minority communities under the law is not merely a function of the content of the laws that govern them but of the broader political and constitutional framework within which those laws operate. A Hindu personal law that is technically fair and non-discriminatory in its provisions offers little protection to a community that is subject to systematic political persecution and displacement. The connection between constitutional security and personal law reform, a theme that runs throughout this treatise, is powerfully illustrated by the Fijian tragedy.

8.4 Malaysia: The Difficulties of Hindu Personal Law in an Islamic State Context

Malaysia offers a particularly instructive comparative case because it shares with Bangladesh the feature of having a Muslim majority, an Islam-referenced constitutional and political framework, and a significant Hindu minority whose personal law operates in the shadow of the dominant Islamic legal system.

Malaysian Hindus, primarily of Tamil Indian descent, constitute approximately six to seven percent of the population, a proportion broadly comparable to Bangladesh's Hindu population. Hindu personal law in Malaysia is governed in part by the Hindu customary law that the community brought from India and in part by Malaysian legislation, including the Law Reform (Marriage and Divorce) Act 1976, which applies to non-Muslims. The 1976 Act provides a statutory framework for marriage and divorce for non-Muslims including Hindus, establishing conditions for valid marriage, grounds for divorce, and provisions for maintenance and the welfare of children.

The Malaysian experience demonstrates that a legislative reform of Hindu personal law is achievable in a Muslim-majority country with an Islam-referenced constitution, that such reform is consistent with constitutional provisions guaranteeing freedom of religion for minority communities, and that the political management of such reform, while challenging, is not impossible. The specific features of the Malaysian legislative framework, including the use of a single non-Muslim personal law statute that applies to all non-Muslim communities rather than separate community-specific statutes, represents an approach that Bangladesh might consider as an alternative to purely community-specific legislation.

The Malaysian experience also illustrates the risks of incomplete reform. The 1976 Act, while providing a divorce mechanism for Hindus and other non-Muslims, does not comprehensively

address all aspects of Hindu personal law. Inheritance and succession for Malaysian Hindus continue to be governed in significant part by unmodified customary Jaffna Tamil law or by the general statutory provisions of Malaysian law, which do not always adequately address the specific situations that arise within Hindu families. The patchwork character of Malaysian Hindu personal law reform is a cautionary example of the limitations of half-measures and the importance of comprehensive codification.

CHAPTER NINE: THE CHINMOY DAS CASE AND INTERNATIONAL RELIGIOUS FREEDOM MECHANISMS

9.1 The Arrest and Prosecution of Chinmoy Krishna Das: Facts and Context

The arrest of Chinmoy Krishna Das Brahmachari, a prominent Hindu religious leader and spokesperson for the Bangladesh Sammilita Sanatan Jagran Jote, in November 2024 and his subsequent prosecution for sedition in the Bangladeshi courts became one of the most internationally visible cases involving the treatment of Bangladesh's Hindu minority in the post-August 2024 period. Understanding this case and its relationship to the broader international advocacy environment for Hindu rights in Bangladesh, including the specific question of personal law reform, requires both factual examination and jurisprudential analysis.

Chinmoy Krishna Das was arrested on November 25, 2024 at Hazrat Shahjalal International Airport in Dhaka. He was charged under Section 120B of the Penal Code with criminal conspiracy and under provisions relating to sedition. The charges arose from a public rally held in Chittagong in October 2024 at which the Bangladesh national flag was allegedly not given proper respect when a saffron flag was hoisted alongside it. The Bangladesh government maintained that the arrest was based on evidence of criminal conduct and had nothing to do with religious persecution; critics, including major international human rights organizations and foreign governments, viewed the arrest as an act of political persecution of a prominent Hindu community leader.

The case generated immediate and widespread international reaction. The United States State Department expressed concern and called for due process. The government of India summoned the Bangladesh High Commissioner and expressed strong concern. The United States Commission on International Religious Freedom, which had designated Bangladesh as a Country of Particular Concern, issued a statement condemning the arrest. Hindu community organizations in India, the United States, the United Kingdom, and other diaspora countries organized protests and lobbying campaigns.

9.2 The International Religious Freedom Dimension

The Chinmoy Das case highlights the international religious freedom dimension of the broader advocacy environment in which the Hindu personal law reform project is embedded. The United States International Religious Freedom Act of 1998 and its subsequent amendments established a

comprehensive framework for the monitoring of international religious freedom and for the designation of and response to countries that are of particular concern because of severe violations of religious freedom.

Bangladesh has appeared on the USCIRF watch list or been designated as a Country of Particular Concern in multiple years. The USCIRF's 2025 factsheet on Bangladesh documented specific concerns including the continuing pattern of violence against Hindu and other religious minorities, the use of blasphemy-like provisions to target minority community members, the inadequate investigation and prosecution of crimes against minorities, and the broader climate of impunity that has allowed religious violence to continue with limited accountability.

The USCIRF's engagement with Bangladesh is relevant to the personal law reform project in a specific and somewhat indirect way. While USCIRF's primary mandate is to monitor freedom of religion rather than the content of religious personal law, the systemic legal discrimination against Hindu women under the current uncodified personal law system is a form of state-sanctioned discrimination against a religious minority that is relevant to the religious freedom framework. The argument that the Bangladesh state's failure to reform discriminatory Hindu personal law is itself a form of failure to protect the religious freedom of Hindu women, specifically their freedom to live in a legal order that does not structurally discriminate against them on the basis of their religious identity, is one that deserves development in the international advocacy literature.

9.3 The Right to Freedom of Religion and Its Relationship to Personal Law Reform

Article 18 of the ICCPR protects freedom of thought, conscience, and religion, including the freedom to change one's religion and the freedom to manifest one's religion in worship, observance, practice, and teaching. The Human Rights Committee's General Comment 22 on Article 18 clarifies that the protection of Article 18 extends to observing dietary regulations, wearing distinctive clothing, and participating in rituals, and more generally to the freedom to live according to the requirements of one's religion.

The relationship between this right to religious freedom and the question of personal law reform is complex and requires careful analysis. On one side of the debate, those who resist Hindu personal law reform sometimes argue that the reform of Hindu personal law represents an interference with the freedom of the Hindu community to live according to its own religious tradition, an interference that is itself a violation of Article 18. On the other side, progressive reformers argue that Article 18's protection of religious freedom belongs to individuals, not to communities, and that the Hindu women whose legal rights are restricted by discriminatory personal law have at least as valid a claim to religious freedom as the religious conservative establishment that seeks to maintain those restrictions.

The Human Rights Committee's jurisprudence on this question is instructive. The Committee has consistently held that Article 18 does not protect the right of religious institutions or communities to maintain practices that violate the human rights of their members, including the rights of women to equality and non-discrimination. The freedom of religion protected by Article

18 is the freedom of individual human beings to believe and practice as they choose; it does not include the right of religious institutions to compel individuals to live under discriminatory rules in the name of religion. Applied to Hindu personal law, this jurisprudence means that the reform of discriminatory personal law provisions does not violate Article 18; rather, it protects the Article 18 rights of Hindu women who wish to live in a legal order that does not discriminate against them on the basis of their sex.

CHAPTER TEN: INTERNATIONAL NGO ENGAGEMENT WITH BANGLADESH'S HINDU PERSONAL LAW SITUATION

10.1 The Major International NGOs and Their Engagement

International non-governmental organizations have played a significant and growing role in documenting the situation of Bangladesh's Hindu minority and in advocating for improvements in both the protection of the community from violence and the reform of the discriminatory legal structures under which they live. The major organizations whose engagement is most relevant to the personal law reform project include Amnesty International, Human Rights Watch, the International Commission of Jurists, Minority Rights Group International, and several regional and specialized organizations.

Amnesty International's engagement with the situation of Bangladesh's Hindu minority has been primarily focused on documenting and condemning specific instances of violence, including the violence of August 2024 and subsequent incidents. Amnesty's August 2024 statement called on the interim Bangladeshi government to take immediate actions to protect Hindu and other minority communities and to conduct swift, thorough, and impartial investigations into crimes against minorities. Amnesty's methodology of documenting specific cases, verifying evidence through independent investigation, and making specific demands of governments provides a model for the kind of civil society engagement that can most effectively support the reform project.

Human Rights Watch has been particularly active in documenting the situation of Bangladesh's religious minorities in the post-August 2024 period. Its 2025 and 2026 World Reports on Bangladesh contain substantial sections on minority rights, including specific documentation of violence against Hindus and other minority communities. HRW's 2026 World Report noted the April 2025 recommendation by the Women's Affairs Reform Commission to reform inheritance laws, and the subsequent mobilization of Hefazat-e-Islam against those recommendations. HRW's engagement with the specific intersection of women's rights and minority rights in Bangladesh is particularly valuable because it frames the reform of Hindu personal law not merely as a minority rights issue but as a women's rights issue, connecting it to the broader advocacy for gender equality in Bangladesh that has received significant international support.

The International Commission of Jurists, which focuses specifically on the independence of the judiciary and the rule of law, has the capacity to engage with the specific legal and judicial

dimensions of the Hindu personal law question in ways that complement the more general human rights advocacy of Amnesty and HRW. The ICJ's expertise in constitutional and comparative legal analysis, and its relationships with the legal profession in multiple countries, makes it a particularly valuable potential partner for the reform project.

Minority Rights Group International, which focuses specifically on the rights of minority and indigenous communities worldwide, has produced detailed documentation of the situation of Hindus and other minority communities in Bangladesh. Its country profiles and reports provide authoritative summaries of the legal and political situation of Bangladesh's religious minorities that can be used by other advocacy organizations, by journalists, and by governments in their assessments of Bangladesh's human rights record.

10.2 The Limitations of International NGO Engagement and the Risk of Oversimplification

The engagement of international NGOs with the situation of Bangladesh's Hindu minority, while valuable, is not without its limitations and risks. The most significant risk is the tendency toward oversimplification inherent in the need to communicate complex situations to international audiences in accessible terms. The situation of Bangladesh's Hindu minority is, as this treatise has consistently emphasized, extraordinarily complex: it involves the intersection of communal violence, legal discrimination, political vulnerability, economic inequality, caste hierarchy within the community, gender discrimination within the community, and the complex geopolitics of India-Bangladesh relations. The tendency of international media and NGO reporting to reduce this complexity to a simple narrative of Muslim-on-Hindu religious persecution serves some advocacy purposes but distorts the underlying reality in ways that can actually impede the development of effective reform strategies.

The East Asia Forum analysis published in March 2025 specifically noted that while Indian media portrayed the post-August 2024 situation as one of systematic religious persecution, the evidence suggested that most incidents of violence against Hindus were politically motivated rather than purely religiously targeted, and that the situation was considerably more complex than the persecution narrative suggested. This distinction matters enormously for the reform project, because the policy responses appropriate to a situation of systematic religious persecution are different from those appropriate to a situation in which religious minorities are disproportionately affected by political violence because of their perceived association with a deposed political regime.

For the specific question of personal law reform, the oversimplification risk manifests in the tendency to treat the reform of Hindu personal law primarily as a response to communal violence rather than as a long-standing, intrinsically justified demand for gender equality and the rule of law. The case for Hindu personal law reform does not depend on the existence of communal violence; it rests on the fundamental principles of equality, dignity, and justice that apply regardless of the political context. International NGO advocacy that connects personal law reform too closely to the communal violence narrative risks creating the impression that reform is primarily a response to an emergency rather than a standing obligation of constitutional governance.

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CHAPTER ELEVEN: THE ROLE OF INTERNATIONAL LEGAL SCHOLARSHIP IN THE REFORM PROJECT

11.1 The Global Academic Community and Hindu Law

One of the less visible but ultimately very important dimensions of the international support for Hindu personal law reform in Bangladesh is the engagement of the global academic community of legal scholars with the questions this treatise has addressed. The academic literature on Hindu law, on personal law reform in South Asia, on the intersection of gender and religious law, and on transnational constitutionalism and comparative legal theory provides a rich intellectual resource for the reform project that has not been fully mobilized in the specific context of Bangladesh.

Werner Menski, whose work on comparative law in a global context has been cited throughout this treatise, has argued that the failure to reform Hindu personal law in Bangladesh represents one of the most significant unaddressed legal injustices in contemporary South Asia. His framework of "living law," which draws on Eugen Ehrlich's sociological jurisprudence to argue that the law that actually governs people's lives often diverges significantly from the formal legal rules on the books, is directly applicable to the situation of Hindu personal law in Bangladesh, where the formal rules derived from colonial-era judicial interpretation of Sanskrit texts often have little connection to the actual practices and norms of Hindu communities in Bangladesh.

Flavia Agnes, whose work on law and gender inequality in the context of the politics of women's rights in India has been enormously influential in the South Asian legal reform literature, has examined the relationship between personal law reform and the broader project of feminist legal transformation in the region. Her analysis of the ways in which personal law reform has been both an instrument and a site of contestation in the politics of gender in India provides important conceptual tools for thinking about how similar dynamics might play out in Bangladesh.

Ratna Kapur's critique of the "victimization rhetoric" in international feminist legal politics, which argues that the framing of Third World women primarily as victims of their own cultures and legal systems can be patronizing and politically counterproductive, raises important questions about how the international advocacy for Hindu personal law reform in Bangladesh should be framed. The risk that the international advocacy for reform will be experienced by Bangladesh's Hindu community, and by many Bangladeshi Muslims, as a form of cultural imperialism that uses the rights of Hindu women as a pretext for attacking Islam or for serving Indian geopolitical interests, is one that advocates must take seriously. Kapur's argument that feminist legal politics must engage with the actual voices and experiences of the women whose rights are at stake, rather than deploying them as symbols in a larger political narrative, has direct implications for the strategy of international advocacy for Hindu personal law reform.

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11.2 The Jurisprudence of Legal Pluralism and Its Implications

The field of legal pluralism, which studies the coexistence of multiple legal systems within a single political order, has important implications for the theoretical framing of Hindu personal law reform in Bangladesh. Legal pluralism theory, associated with scholars like John Griffiths, Boaventura de Sousa Santos, and Sally Engle Merry, challenges the positivist assumption that each sovereign state has a single, unified legal system that is applicable to all persons and situations within its territory. The reality of most postcolonial states, including Bangladesh, is one of genuine legal pluralism: multiple, overlapping legal systems, including state law, religious personal law, customary law, and informal community governance, govern the lives of different communities in different domains of social life.

For the Hindu personal law reform project in Bangladesh, legal pluralism theory is simultaneously a theoretical resource and a challenge. As a theoretical resource, it provides a vocabulary for analyzing the specific character of the legal situation of Bangladesh's Hindu minority: they live under a form of legal pluralism in which state law and Hindu personal law coexist, with different systems governing different domains of their lives. As a challenge, legal pluralism theory can be used to defend the maintenance of a distinctive Hindu personal law system against arguments for uniform application of a single non-discriminatory state law, on the grounds that legal pluralism reflects the genuine diversity of a multicultural society and that the elimination of religious personal law in favor of a single civil code represents a form of legal imperialism that denies the legitimacy of minority legal traditions.

The critical legal pluralism response to this challenge, developed by scholars like Upendra Baxi and Rajeev Bhargava, distinguishes between a legitimate pluralism that respects the genuine diversity of legal cultures and an illegitimate pluralism that uses the rhetoric of cultural diversity to maintain structures of domination and exploitation within minority communities. Not all instances of legal pluralism are equally worthy of respect: a legal pluralism that allocates different, inferior rights to women within minority communities, and that uses the language of cultural tradition to resist the demands of those women for equality, is not a legitimate expression of multicultural respect but a form of domination dressed in pluralistic language.

This is the fundamental jurisprudential argument for Hindu personal law reform: not that the distinctive legal traditions of Hindu culture are worthless or that they should be suppressed in favor of a homogenizing civil code, but that a legal pluralism worthy of respect must be one in which all members of each legal community, including its women, enjoy genuine equality and genuine agency. A pluralism that requires Hindu women to sacrifice their equality is not genuine pluralism but a privatization of patriarchy.

CHAPTER TWELVE: THE DIPLOMATIC DIMENSION: FOREIGN POLICY, BILATERAL RELATIONS, AND THE POLITICS OF MINORITY RIGHTS PRESSURE

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12.1 The Structure of Minority Rights Diplomacy

The diplomacy of minority rights is one of the most delicate and contested areas in contemporary international relations. The principle that states have the right to determine their own internal affairs, enshrined in Article 2(1) of the UN Charter, sits in chronic tension with the principle that the international community has both the right and the responsibility to be concerned with how states treat their populations, a principle whose normative foundations have been strengthened by the development of international human rights law, the emergence of the Responsibility to Protect doctrine, and the increasing acceptance that state sovereignty is not absolute but conditional on states' fulfillment of their obligations to their own populations.

In the specific context of Bangladesh's Hindu minority, the diplomatic dimension involves multiple bilateral and multilateral relationships. The India-Bangladesh bilateral relationship is the most important and most politically charged. The United States' engagement with Bangladesh through the framework of its International Religious Freedom Act, the annual State Department reports on international religious freedom, and the monitoring role of USCIRF represents a second major diplomatic channel through which concern about the treatment of Bangladesh's Hindu minority, including its treatment under discriminatory personal law, can be expressed. The European Union's engagement with Bangladesh through various cooperation agreements and political dialogues represents a third channel, one that can be connected to the EU's strong advocacy for gender equality as a core value of its foreign policy.

The United Kingdom's relationship with Bangladesh, shaped by the large British Bangladeshi community and by the historical colonial connection, provides a fourth important diplomatic channel. The UK Home Office's June 2025 Country Policy and Information Note on religious minorities and atheists in Bangladesh represents an important and detailed official assessment of the situation that can be used in advocacy.

12.2 The Instrumentalization Problem and How to Manage It

The central challenge in the diplomacy of minority rights advocacy for Bangladesh's Hindu community is what might be called the instrumentalization problem: the tendency for foreign states to use the language of minority rights as an instrument of diplomatic pressure or domestic political mobilization rather than as a principled commitment to the welfare of the community concerned. The instrumentalization of Bangladeshi Hindu rights by India, discussed in the previous chapters, is the most obvious and most significant instance of this problem, but it is not the only one.

The United States' engagement with religious freedom issues in Bangladesh is shaped, at least in part, by geopolitical considerations related to US-Bangladesh relations, by the influence of Hindu American lobbying organizations on US politics, and by the broader context of US policy toward South Asia and Islam. The European Union's advocacy for gender equality in its foreign policy relationships is also shaped by the EU's own political interests and by the domestic politics of its member states. None of this means that foreign state advocacy for the rights of Bangladesh's Hindu community is necessarily cynical or counterproductive; it means that it must

be understood as what it is, politically shaped advocacy that sometimes advances and sometimes impedes the principled project of reform, and that must be managed strategically by domestic reform advocates.

The strategic management of the instrumentalization problem requires several things of domestic reform advocates. It requires maintaining the clarity and independence of their own advocacy, ensuring that they are not captured by the agenda of any particular foreign state or diaspora political movement. It requires building coalitions with international civil society organizations whose mandate is grounded in universal human rights principles rather than in the geopolitical interests of any particular state. It requires framing the reform project in terms of Bangladesh's own constitutional principles and its own obligations under international law, rather than as a response to foreign pressure. And it requires being willing to acknowledge and address the complexity of the situation, including the internal problems within the Hindu community itself, rather than presenting a simplified narrative of victimhood that serves the agenda of particular political actors.

12.3 The Role of International Financial Institutions

One often-overlooked dimension of the international engagement with Bangladesh that is relevant to the reform project is the role of international financial institutions, particularly the International Monetary Fund, the World Bank, and the Asian Development Bank, in shaping Bangladesh's policy environment. These institutions provide significant financial support to Bangladesh and exercise considerable influence over its economic and regulatory policies through their conditionality requirements and their policy dialogue with the Bangladesh government.

The international development finance community has, over the past two decades, developed a significant body of work on the relationship between gender equality, including equality in personal law, and economic development. The World Bank's analysis consistently shows that legal discrimination against women in inheritance and property rights is associated with lower economic growth, higher rates of poverty among women, and weaker overall development outcomes. The arguments for Hindu personal law reform are thus not merely legal and ethical but economic: the elimination of discriminatory inheritance rules and the introduction of divorce rights and equal guardianship for Hindu women would contribute to the economic empowerment of a significant portion of Bangladesh's population and would strengthen the overall development trajectory of the country.

International financial institutions do not typically make personal law reform a specific condition of their financial support, but they do engage in policy dialogue with governments on issues of gender equality and women's legal rights that is relevant to the personal law context. Reform advocates can engage with this dimension of the international environment by working with development-oriented civil society organizations to incorporate the specific question of Hindu personal law reform into the broader advocacy for women's economic empowerment in Bangladesh.

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CHAPTER THIRTEEN: THE WOMEN'S RIGHTS MOVEMENT AS INTERNATIONAL ALLY: FEMINIST JURISPRUDENCE AND THE REFORM PROJECT

13.1 The Global Women's Rights Movement and South Asian Personal Law

The international women's rights movement, which has produced an enormously rich body of theory, advocacy, and legal development over the past half-century, is one of the most important potential international allies of the Hindu personal law reform project in Bangladesh. The feminist jurisprudence that has emerged from this movement, engaging with questions of law, gender, and equality across multiple disciplines including legal theory, political philosophy, sociology, anthropology, and political science, provides both a theoretical framework and a practical advocacy tradition that is directly applicable to the specific situation of Hindu women in Bangladesh.

Feminist legal theorists have analyzed personal law discrimination from multiple theoretical perspectives, each of which yields different but complementary insights into the nature of the problem and the appropriate response. Liberal feminist theory, grounded in the tradition of Mill and Wollstonecraft and developed in the contemporary legal context by scholars like Martha Nussbaum and Ruth Bader Ginsburg, focuses on the formal equality of rights: women are entitled to exactly the same legal rights as men, and any legal system that grants different rights on the basis of sex is presumptively unjust. Applied to Hindu personal law in Bangladesh, liberal feminist theory produces a straightforward and compelling argument: a legal system that denies women equal inheritance rights, that provides no mechanism for women to dissolve marriages, and that gives men superior rights in guardianship, is fundamentally inconsistent with the principle of equal rights that is the cornerstone of liberal democracy.

Substantive feminist theory, associated with scholars like Catharine MacKinnon and Robin West, goes further than the formal equality argument. It focuses not merely on the formal equality of rights but on the material conditions of women's lives, and it argues that formal legal equality is insufficient when it coexists with structural conditions of economic dependence, physical vulnerability, and social subordination that make the formal rights meaningless. Applied to the situation of Hindu women in Bangladesh, substantive feminist theory would argue that even if the formal rules of Hindu personal law were made gender-equal on paper, the reform would be insufficient unless it was accompanied by measures to address the economic vulnerability, social pressure, and lack of information that prevent Hindu women from actually exercising their formal rights.

Cultural feminist theory, associated with scholars like Carol Gilligan and Nel Noddings, emphasizes the importance of caring relationships and community solidarity in women's moral and legal lives, and raises questions about whether reform models derived from liberal individualism fully capture the values and experiences of women in non-Western cultural contexts. Applied to the Hindu personal law reform project, cultural feminist theory would

counsel attention to the specific values and relationship structures that are important to Hindu women in Bangladesh, ensuring that reform is designed in a way that respects those values rather than simply imposing an external individualist framework.

Postcolonial feminist theory, associated with scholars like Gayatri Chakravorty Spivak, Chandra Mohanty, and Ratna Kapur, raises critical questions about the ways in which international feminist advocacy can reproduce colonial power relations, representing Third World women as victims of their own cultures and in need of rescue by Western or Western-influenced feminist movements. Applied to the international dimension of the Hindu personal law reform project, postcolonial feminist theory counsels a reform strategy that is grounded in the voices and experiences of Hindu women in Bangladesh themselves, that engages with the internal resources of the Hindu tradition for reform rather than simply importing external models, and that is sensitive to the ways in which the international advocacy environment can be captured by geopolitical interests that are not aligned with the actual welfare of the women whose rights are at stake.

13.2 The Women's Affairs Reform Commission of 2025 and Its Significance

A development of particular significance for the intersection of the women's rights movement and the Hindu personal law reform project is the recommendation by Bangladesh's Women's Affairs Reform Commission, established by the interim government of Muhammad Yunus, in April 2025, to reform inheritance laws and take other steps to advance gender equality. This recommendation, reported by Human Rights Watch and other international observers, represents a significant moment in which the international women's rights framework, as applied to Bangladesh through the commission process, has produced a concrete governmental endorsement of inheritance law reform.

The significance of this development for the Hindu personal law reform project requires careful analysis. The Women's Affairs Reform Commission's recommendations appear to have been primarily directed at reforming Muslim inheritance law to give daughters equal shares with sons, a reform that would be justified under both Islamic principles of equality and Bangladesh's constitutional commitments. But the principle of equal inheritance rights that the Commission endorsed applies with at least equal force to Hindu personal law, where the discrimination against female heirs is even more severe than it has historically been under Muslim law.

The immediate reaction to the Commission's recommendations by Hefazat-e-Islam, which mobilized nearly 20,000 supporters to protest the proposed reforms, illustrates the political resistance that any serious reform of inheritance law in Bangladesh will face. But it also illustrates the nature of that resistance: it is primarily organized by conservative Islamic forces and is directed primarily against the reform of Muslim inheritance law. The reform of Hindu personal law, while it would face some similar opposition from conservative Hindu voices, is a different and in some ways politically simpler question: reforming the personal law of a religious minority does not engage the political mobilization capacity of the majority community's religious establishment.

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CHAPTER FOURTEEN: BUILDING TRANSNATIONAL COALITIONS FOR REFORM: STRATEGY, ORGANIZATION, AND THE LONG GAME

14.1 The Architecture of Effective Transnational Advocacy

The analysis in this and earlier chapters of the international and diaspora dimensions of the Hindu personal law reform project points toward a set of strategic conclusions about how to build the most effective possible transnational coalition for reform. These conclusions are drawn from the theoretical literature on transnational advocacy networks, from the comparative experience of successful and unsuccessful personal law reform campaigns in other countries, from the specific characteristics of the Bangladesh political and legal environment, and from the current landscape of international institutions and organizations whose engagement can be mobilized in support of the reform project.

The first strategic conclusion is about the importance of coordination among the different components of the international advocacy network. At present, the various international actors who are concerned about the situation of Bangladesh's Hindu community, including the Indian government, the Indian diaspora, the Bangladeshi Hindu diaspora in the UK, US, and Australia, international human rights organizations like HRW and Amnesty International, the UN treaty bodies and special procedures, and the US government through USCIRF and the State Department, operate largely independently of each other, sometimes with conflicting agendas and sometimes working at cross-purposes. A more coordinated approach, in which the different actors agree on shared goals and divide the labor of advocacy among them in a way that maximizes their combined effectiveness while minimizing the instrumentalization risks, would be significantly more powerful.

The coordination challenge is complicated by the fact that some of the most visible international actors, particularly the Indian government and Hindu nationalist diaspora organizations, have agendas that are not fully aligned with the principled human rights advocacy that the reform project requires. A strategic approach to coalition-building therefore requires, paradoxically, both engaging with these powerful actors and maintaining sufficient independence from them to ensure that the reform project is not captured by geopolitical interests that may at times be more interested in embarrassing Bangladesh than in actually improving the situation of Hindu women.

The second strategic conclusion is about the importance of centering the voices of Hindu women in Bangladesh in the international advocacy. The risk that the international advocacy becomes a project conducted by diaspora men, Indian politicians, and Western human rights professionals on behalf of Bangladeshi Hindu women, rather than a project in which those women are the primary agents, is a real one that requires active management. The most effective international advocacy will be that which amplifies and supports the voices of the women's organizations within Bangladesh's Hindu community, which provides those organizations with the resources and international connections they need to be effective, and which takes its cues from those organizations' own understanding of their priorities and needs.

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14.2 The Role of International Legal Education and Professional Networks

A specific and underexplored dimension of the international support for Hindu personal law reform in Bangladesh is the role of the international legal professional community, including law faculties, legal professional organizations, and comparative law networks, in providing the intellectual resources and the professional solidarity that the reform project needs.

The reform of Hindu personal law in Bangladesh requires a significant investment in legal drafting, comparative legal research, and jurisprudential analysis. The generation of reform legislation requires detailed comparative study of the Indian, Nepali, Malaysian, and other models. The drafting of model legislation requires legal professionals with expertise in both Hindu law and the specific requirements of Bangladeshi constitutional and administrative law. The litigation strategy required to use constitutional law to challenge discriminatory provisions and to compel legislative reform requires lawyers with expertise in constitutional litigation and in the specific precedents of the Bangladeshi courts.

International legal education institutions, including law faculties in the UK, the US, Australia, and India with strong programs in comparative law and South Asian legal studies, can contribute to this capacity-building effort by training Bangladeshi lawyers, by conducting comparative research on Hindu personal law reform, by hosting the publications and advocacy documents that the reform project produces, and by providing platforms for the international dissemination of the arguments and findings that the reform effort generates.

International legal professional organizations, including the International Bar Association, the Law Society of England and Wales, and regional bar associations in South Asia, have the capacity to mobilize support for legal reform projects and to provide professional assistance to reformers in specific countries. The engagement of these organizations with the Hindu personal law reform project in Bangladesh could provide valuable support both in the form of legal technical assistance and in the form of international professional credibility for the reform effort.

14.3 Diaspora Legal Professionals as Bridge Builders

Among the most valuable potential assets of the reform project are the legal professionals of Bangladeshi Hindu origin who are now practicing in other countries, particularly in the UK, the US, and India. These professionals combine deep cultural and personal connections with Bangladesh's Hindu community with the legal skills, international networks, and foreign nationality status that can enable them to serve as highly effective advocates at the interface of domestic and international advocacy.

Diaspora legal professionals can contribute to the reform project in multiple ways. They can conduct and publish comparative legal research that is both academically credible and practically useful for the drafting of reform legislation. They can participate in international advocacy before treaty bodies, special procedures mechanisms, and foreign governments, lending professional legal credibility to the arguments for reform. They can build relationships with legal professional organizations in their countries of residence that can mobilize support for the reform

project. And they can provide pro bono legal assistance to Hindu women in Bangladesh who are seeking to enforce their rights in the domestic courts, helping to build the case law that can support the legislative reform project.

The development of a diaspora legal professional network specifically focused on Hindu personal law reform in Bangladesh would be a significant organizational achievement that could substantially increase the effectiveness of the international advocacy dimension of the reform project. Such a network does not currently exist in any organized form, and its creation would require deliberate organizational effort and resources. But the potential contribution of such a network to the reform project is substantial enough to justify the investment.

14.4 The Role of Comparative Religion and Theological Advocacy

A final dimension of the international support network that deserves explicit attention is the role of comparative religion scholars and progressive Hindu theologians whose work can provide the internal theological grounds for reform that conservative resistance requires. The argument that Hindu personal law reform is not merely an external imposition of secular or Western standards but is consistent with and indeed demanded by the deepest values of the Hindu religious tradition itself, an argument that has been made throughout this treatise, requires the support of credible theological and religious scholarship.

International scholars of Hinduism and comparative religion, including those based at universities in the United States, the United Kingdom, and India, have produced a substantial body of work demonstrating the textual and theological grounds within the Hindu tradition for gender equality, for the revision of discriminatory practices, and for the adaptation of Dharmic principles to the conditions of the contemporary world. This scholarship provides reform advocates with the theological arguments they need to respond to the conservative claim that reform is a betrayal of Hindu tradition, and it lends international scholarly credibility to those arguments.

The engagement of progressive Hindu religious leaders and theologians, both within Bangladesh and internationally, in the advocacy for personal law reform is also important. When reform is endorsed not merely by secular lawyers and human rights advocates but by credible religious authorities who can speak the language of Dharma, Shastra, and the tradition's own commitment to justice, it becomes much harder for conservative voices to characterize it as an attack on Hinduism.

CHAPTER FIFTEEN: THE INTERNATIONAL FRAMEWORK FOR COMPREHENSIVE REFORM: AN INTEGRATED ANALYSIS

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15.1 Synthesizing the International Dimensions

The analysis in this Part has examined the international and diaspora dimensions of the Hindu personal law reform project in Bangladesh from multiple perspectives: the theory of transnational advocacy, the demographics and politics of the Bangladeshi Hindu diaspora, the India dimension, the international human rights treaty body system, the UPR and special procedures, the comparative experience of other jurisdictions, and the role of international NGOs, legal scholars, and women's rights organizations. It is now time to synthesize these different dimensions into an integrated analytical framework.

The fundamental insight that emerges from this synthesis is that the international dimension of the reform project is not simply a matter of external pressure applied from outside Bangladesh to compel a resistant government to act. It is a multi-layered complex of institutions, actors, and advocacy networks that interact with the domestic reform project in multiple ways, sometimes reinforcing and sometimes complicating the domestic advocacy, sometimes opening political space for reform and sometimes contributing to the nationalist backlash that makes reform more difficult. Managing this complexity requires sophisticated strategic thinking and a clear understanding of both the opportunities and the risks that the international environment presents.

The opportunities are substantial. Bangladesh's integration into the international community, its dependence on international financial support, its desire for international recognition and respectability, and its stated commitment to international human rights standards all create leverage points for international advocacy that can be used to advance the reform agenda. The treaty body system, the UPR, the special procedures, and the diplomatic engagement of key foreign governments all provide mechanisms through which international concern about discriminatory Hindu personal law can be translated into concrete pressure for legislative action.

The risks are equally real. The instrumentalization of minority rights advocacy by India and by Hindu nationalist organizations creates the danger that advocacy for the rights of Bangladesh's Hindu community will be experienced as a form of Indian interference and will generate a nationalist backlash that makes reform more difficult. The tendency of international media and NGO reporting to oversimplify the complex situation of Bangladesh's Hindu minority creates the risk that international advocacy will be based on a distorted picture of the situation and will push for solutions that are not well-calibrated to the actual challenges on the ground.

15.2 The Principle of Complementarity Between Domestic and International Reform Efforts

The relationship between domestic and international reform advocacy is best understood through the principle of complementarity: international advocacy is most effective when it complements and reinforces a strong domestic advocacy movement rather than substituting for one, and domestic advocacy is most effective when it can draw on the legitimacy, resources, and political leverage that international engagement provides.

The complementarity principle implies a division of labor in which domestic reform advocates focus primarily on building the political and social conditions within Bangladesh that make

legislative reform achievable, while international advocates focus primarily on creating the external pressure and the international legitimacy that support and strengthen the domestic reform movement. International actors should not attempt to substitute for domestic advocacy or to drive the reform agenda from outside; their role is to amplify, support, and provide resources for the domestic movement, and to create an international political environment in which the Bangladesh government understands that reform will be rewarded with international approbation and non-reform will be subjected to continued international scrutiny.

The complementarity principle also implies that the relationship between domestic and international advocates must be one of genuine partnership rather than a hierarchical relationship in which international actors set the agenda and domestic actors implement it. The most effective transnational advocacy for personal law reform will be that in which the direction, priorities, and framing of the advocacy are determined by the domestic actors most directly affected, particularly the women's organizations within Bangladesh's Hindu community, and in which international actors provide the resources, connections, and amplification that those domestic actors need to be effective.

15.3 The Transformative Constitutionalism Framework and Its International Dimensions

Karl Klare's concept of transformative constitutionalism, which has been discussed in earlier Parts of this treatise in the domestic constitutional context, also has an important international dimension that is relevant to the Hindu personal law reform project. Transformative constitutionalism, in its international dimension, refers to the use of international human rights law and comparative constitutional jurisprudence as resources for domestic legal transformation. When domestic constitutional courts engage with international human rights standards, when domestic legislatures frame reform proposals in terms of international treaty obligations, and when domestic civil society advocates draw on international legal resources to strengthen their arguments, the international legal order becomes a resource for domestic constitutional transformation rather than a merely external constraint on state behavior.

For Bangladesh's Hindu personal law reform project, the transformative constitutionalism framework in its international dimension has several practical implications. It implies that the CEDAW Committee's recommendations, the Human Rights Committee's general comments, and the concluding observations of other treaty bodies should be incorporated explicitly into the domestic advocacy for reform, as evidence of the specific content of Bangladesh's international obligations and as authoritative interpretations of the legal standards that Bangladesh is required to meet. It implies that the comparative constitutional jurisprudence of India, Nepal, South Africa, and other countries in which courts have used constitutional equality principles to strike down or limit discriminatory personal law provisions should be cited in Bangladeshi constitutional litigation as persuasive authority for the proposition that Bangladesh's own courts have the power and the obligation to act. And it implies that the drafting of reform legislation should be explicitly grounded in international human rights standards, ensuring that the legislation is framed in terms that the international human rights community will recognize as compliance with Bangladesh's treaty obligations.

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15.4 The Strategic Use of International Legitimacy in Domestic Reform Campaigns

A final dimension of the synthesis deserves explicit attention: the strategic use of international legitimacy by domestic reform advocates in their campaigns for legislative change. International recognition, international awards, and international endorsement are political resources that can be deployed effectively in the domestic political arena.

When a proposal for Hindu personal law reform is endorsed by the CEDAW Committee, cited approvingly by Human Rights Watch, supported by comparative legal scholars at major universities, and recommended by the report of the UN Special Rapporteur on Violence Against Women, it carries a form of international legitimacy that is a genuine political asset in Bangladesh's domestic political arena. The Bangladesh government, which is seeking international recognition and international financial support, cannot simply dismiss proposals that carry this kind of international endorsement. Its choice is either to engage seriously with the proposals or to risk the political cost of being seen internationally as a government that refuses to reform discriminatory laws affecting its own citizens.

The strategic use of international legitimacy is not a substitute for domestic political organizing. International endorsement does not by itself produce legislative change in the face of a resistant government and a powerful conservative opposition. But it changes the political calculus in ways that create opportunities for reform advocates to advance their cause. It makes the government's non-action more costly, reduces the political risk of acting, and increases the credibility and visibility of the reform proposals in the domestic debate.

CONCLUSION TO PART FIFTEEN

Part Fifteen has traced the international and diaspora dimensions of the Hindu personal law reform project in Bangladesh through a comprehensive analysis that has moved from the theory of transnational advocacy networks to the demographics and politics of the Bangladeshi Hindu diaspora, from the India-Bangladesh bilateral relationship to the international human rights treaty body system, from the comparative legal experiences of India, Nepal, Sri Lanka, and Hindu diaspora communities in other countries to the specific roles of international NGOs, legal scholars, women's rights organizations, and the global legal professional community.

The central conclusion that emerges from this analysis is that the international dimension of the reform project is genuinely significant, not merely as a source of external pressure but as a source of legal resources, intellectual frameworks, organizational support, and political legitimacy that can substantially strengthen the capacity of domestic reform advocates to achieve the legislative changes they are seeking. The international human rights system, the comparative legal tradition, the global women's rights movement, and the transnational Hindu community all have genuine and substantial contributions to make to the reform project.

At the same time, the international dimension is not without its risks and complications. The instrumentalization of minority rights advocacy by geopolitical actors, the tendency toward oversimplification in international media and NGO engagement, and the risk of colonial or paternalistic framings of the reform project are genuine dangers that require deliberate management. The most effective international engagement will be that which is grounded in universal human rights principles, which centers the voices and agency of the women most directly affected, which engages with the theological and cultural resources of the Hindu tradition itself rather than simply imposing external standards, and which supports rather than substitutes for the domestic reform movement within Bangladesh.

Five specific conclusions deserve particular emphasis as the treatise moves toward its final Part.

The first is that Bangladesh's international human rights obligations, under CEDAW, the ICCPR, the ICESCR, and other instruments, are directly applicable to the question of Hindu personal law reform, and that Bangladesh's reservations to CEDAW do not exempt it from those obligations as they apply to Hindu personal law. The Bangladesh government cannot invoke its CEDAW reservations, which are explicitly limited to Islamic law, as a justification for the failure to reform Hindu personal law. This is a powerful legal argument that has not been sufficiently developed in the domestic advocacy literature and that deserves to be more prominently featured in future reform campaigns.

The second conclusion is that the Universal Periodic Review process and the treaty body system together provide a regular cycle of international scrutiny and recommendation that creates a sustained structure of international accountability for Bangladesh's performance on minority rights, including the specific question of Hindu personal law. The strategic use of these mechanisms, through well-prepared shadow reports, through engagement with treaty body proceedings, and through the follow-up advocacy that translates international recommendations into domestic political pressure, is a core component of the international dimension of the reform strategy.

The third conclusion is that the comparative legal experience of India, Nepal, Malaysia, and other jurisdictions with Hindu personal law systems provides a rich repertoire of legislative models, constitutional arguments, and practical lessons that can directly inform the drafting and advocacy of reform legislation in Bangladesh. The global legal scholarship on Hindu law reform, on personal law and gender equality, and on the constitutional dimensions of minority rights is a significant intellectual resource that has not been sufficiently mobilized in the specific context of Bangladesh's reform debate.

The fourth conclusion is that the diaspora, particularly the diaspora legal professional community and the women's organizations within the diaspora, has a specific and valuable contribution to make to the reform project that combines local knowledge, cultural connection, and international resources in a way that neither domestic advocates alone nor international organizations alone can replicate. The deliberate cultivation of diaspora engagement, particularly from the progressive and women's-rights-focused segments of the diaspora, is an important component of the overall reform strategy.

The fifth and most fundamental conclusion is that the international dimension of the reform project, like the domestic dimension analyzed in the earlier Parts, ultimately comes back to the same irreducible moral and legal imperative: that the citizens of Bangladesh who identify as Hindu, numbering some thirteen million people including millions of women whose most intimate personal rights are governed by a discriminatory system that the state has never reformed, deserve the same quality of legal protection, the same guarantee of equality, and the same respect for their dignity as every other citizen of the Republic. The international human rights system, the global women's rights movement, the comparative legal tradition, and the transnational Hindu community are all, ultimately, expressions of the conviction that this imperative is not merely a domestic concern of the Bangladesh government but a matter of universal human rights in which the entire international community has a stake and a responsibility.

Part Sixteen, the final Part of this treatise, will offer a comprehensive synthesis of all fifteen preceding Parts and a forward-looking analysis of the prospects for comprehensive Hindu personal law reform in Bangladesh in the constitutional, political, and international landscape of 2026 and beyond. It will seek to integrate the philosophical foundations laid in Part One, the domain-specific legal analysis of Parts Two through Seven, the constitutional and comparative analysis of Parts Eight through Thirteen, the sociological and community analysis of Part Fourteen, and the international dimension analyzed in this Part, into a unified argument for reform and a realistic assessment of the conditions under which that reform can be achieved.

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Part Fifteen of this treatise concludes here. Part Sixteen, the final Part of this work, will offer a comprehensive synthesis of the entire treatise and a forward-looking reflection on the prospects for comprehensive Hindu personal law reform in Bangladesh in the constitutional and political landscape of 2026 and beyond. It will draw together the philosophical foundations laid in Part One, the domain-specific legal analysis of the intermediate Parts, the sociological analysis of Part Fourteen, and the international analysis of this Part, and it will offer a final statement of the philosophical, jurisprudential, and political case for reform together with a realistic assessment of the path forward. Part Sixteen will conclude with a model legislative draft and a comprehensive reform agenda that is both jurisprudentially principled and politically achievable.

PART SIXTEEN

The Reckoning and the Road Forward: A Final Synthesis of Philosophy, Jurisprudence, Constitutional Theory, and Political Strategy for the Comprehensive Reform of Hindu Personal Law in Bangladesh

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FOREWORD TO PART SIXTEEN

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Every great legal project, if it has been pursued with sufficient depth and intellectual honesty, arrives eventually at the moment of reckoning. This is that moment for the present treatise. Fifteen Parts have been devoted to the examination of Hindu personal law in Bangladesh from every significant angle that the demands of scholarly completeness and practical advocacy could suggest. The philosophical foundations of the Dharmasastra tradition have been interrogated. The colonial construction of Hindu law as it applies to Bangladesh has been traced through its historical stages. The Dayabhaga school's specific doctrines of inheritance, succession, and family property have been analyzed with jurisprudential precision. The law of Hindu marriage, including its most urgent scandal, the complete absence of any divorce mechanism, has been subjected to both doctrinal analysis and rights-based critique. The constitutional framework of Bangladesh, with its commitments to equality and dignity and its troubling silence on the specific demands of personal law reform, has been examined in depth. The comparative experiences of India, Nepal, Sri Lanka, Malaysia, Mauritius, Fiji, and the Hindu diaspora communities of the Western world have been surveyed. The sociology of the Hindu community in Bangladesh, with its internal divisions of caste, class, generation, and gender politics, has been mapped. The international human rights architecture and the role of the diaspora have been examined. And throughout all of this analysis, a single argument has been developed, clarified, deepened, and made more precise: that the continued application of unreformed, largely uncodified, colonial-era Hindu personal law to the approximately thirteen million Hindu citizens of Bangladesh is both a profound legal injustice and a solvable problem.

This final Part does not merely summarize what has come before. It synthesizes. It takes the different strands of the argument developed across fifteen Parts and weaves them into a unified statement of the case for reform, a final articulation of the philosophical, jurisprudential, constitutional, comparative, and political grounds on which that case rests. It then turns to the question of the path forward with the seriousness and the realism that fifteen Parts of preparatory analysis have made possible: what specific reforms are needed, in what sequence should they be pursued, what political and legal strategies offer the best prospects for success, and what is the realistic timeframe within which comprehensive reform can be achieved?

The treatise began with a claim that Hindu personal law in Bangladesh is a human rights emergency. It concludes with an argument that the emergency has a solution, that the solution is available, and that the political will to pursue it, though difficult to generate and sustain, is not beyond reach if the reform project is pursued with the combination of philosophical clarity, legal precision, strategic intelligence, and moral seriousness that the situation demands.

CHAPTER ONE: THE PHILOSOPHICAL SYNTHESIS: DHARMA, RIGHTS, AND THE IMPERATIVE OF REFORM

1.1 Returning to the Beginning: Dharma as the Ground of Reform

This treatise began, in Part One, with the concept of Dharma as the conceptual core of Hindu legal philosophy. It is fitting that the final synthesis should begin there as well. For the most

important philosophical claim of the entire treatise is not a claim derived from external sources of authority, not a claim that the standards of Western human rights law or of liberal political philosophy require Bangladesh to reform its Hindu personal law, though those standards do require it. The most important philosophical claim is the internal one: that a genuinely Dharmic legal order, faithful to the deepest values of the Hindu tradition, is incompatible with the discriminatory personal law that currently governs Bangladesh's Hindu community.

The concept of Dharma, as Part One established, is not a simple or static concept. It encompasses cosmic order, ethical duty, social obligation, and the proper way of living in accordance with the fundamental nature of reality. It varies with time, place, and circumstance. And its application requires wisdom, judgment, and the capacity to distinguish between what is essential and permanent in the tradition and what is historically contingent and therefore revisable. The great jurists of the Dharmasastra tradition, from Manu and Yajnavalkya to Jimutavahana himself, the founder of the Dayabhaga school, understood themselves as engaged in this ongoing work of Dharmic interpretation and adaptation. They were not merely recording eternal truths but grappling with the demands of their own times and places.

The argument for reform is therefore, in the first instance, an argument within the tradition rather than against it. The rules that currently govern the inheritance, marriage, and family rights of Hindu Bangladeshis are not expressions of eternal Dharmic truth. They are the products of a specific historical process: the encounter between Sanskrit scholarly tradition and British colonial administration, mediated through the courts of the East India Company and the Privy Council, and crystallized into a form that served the administrative needs of colonial governance rather than the Dharmic needs of the community. The claim that these colonial constructs are sacrosanct, that they express a Dharmic wisdom that cannot be questioned or revised, is both historically false and jurisprudentially incoherent. It is historically false because it ignores the colonial construction of the law. And it is jurisprudentially incoherent because it treats the outputs of a specific historical moment in the process of Dharmic interpretation as though they were the eternal inputs of that process, confusing the product of Dharmic reasoning at one point in time with the principle of Dharma itself.

The genuine Dharmic principle, the principle that animates the tradition at its most profound level, is the principle of righteous order, the principle that social arrangements should reflect and sustain the cosmic law of justice and harmony. When social arrangements manifestly fail this test, when they systematically deny the agency, dignity, and basic rights of half the members of the community, when they perpetuate injustice in the name of tradition, the Dharmic imperative is not to maintain them but to reform them. This is not a revolutionary argument; it is a conservative one, in the deepest sense of conserving what is genuinely valuable in a tradition by distinguishing it from the accretions of historical contingency that have attached themselves to it.

1.2 Rights Theory and Its Limits: The Necessity of a Hybrid Framework

Part One also introduced the comparison between Dharma as a grounding for Hindu legal philosophy and the natural law tradition in Western jurisprudence, noting both the similarities and the important differences between these two frameworks. The synthesis at this final stage of

the treatise requires a more explicit confrontation with the question of what theoretical framework is most appropriate for the project of Hindu personal law reform in Bangladesh.

The dominant framework in contemporary international human rights law and in much of the reform advocacy literature is one derived from liberal rights theory: individuals have rights, those rights include the right to equality and non-discrimination, and a legal system that denies equal rights on the basis of sex is a violation of those rights that the state is obligated to remedy. This framework is powerful and has been enormously influential in driving personal law reform movements in South Asia and elsewhere. The Hindu Succession Act of 1956 in India, the National Civil Code of 2017 in Nepal, and the advocacy for reform in Bangladesh are all, to a significant degree, expressed in the language of rights.

But the rights framework alone is insufficient for the purposes of the Bangladeshi reform project. It is insufficient for two related reasons. The first is political: in the specific context of Bangladesh, where the reform project must build support within a community that is politically vulnerable, culturally conservative in significant segments, and deeply attached to the religious and philosophical framework of Hinduism, a purely secular rights-based argument is likely to be less persuasive than an argument that engages with the tradition on its own terms. The second reason is philosophical: the rights framework, at its most abstract, can seem to posit a context-free individual whose rights are defined independently of their relationships, their community, their culture, and their religious tradition. This is a philosophical abstraction that does not fully capture the actual situation of Hindu women in Bangladesh, whose lives are embedded in complex webs of relationship and community that a purely individualist rights framework cannot adequately address.

The framework that this treatise has developed, implicitly through its various analyses, is a hybrid one that combines the external standards of international human rights law with the internal resources of the Hindu tradition for reform. This hybrid framework acknowledges that the demands of gender equality and equal treatment before the law are universal, applicable to all legal systems regardless of their cultural or religious foundations. But it also insists that the most persuasive and the most durable path to reform runs through the tradition itself: by showing that the demands of Dharma, properly understood, are consistent with and indeed require the reforms being sought. The synthesis of external rights standards and internal Dharmic reasoning is not a contradiction but a philosophical achievement, one that requires the kind of deep engagement with both the Western jurisprudential tradition and the Hindu philosophical tradition that this treatise has attempted throughout.

1.3 The Capabilities Approach and Its Application to Hindu Women in Bangladesh

Among the various theoretical frameworks that have been developed in recent decades for thinking about justice and human rights in a way that goes beyond the abstractions of classical rights theory, Martha Nussbaum's capabilities approach deserves particular attention in the context of this synthesis. The capabilities approach, which Nussbaum has developed in a series of major works including "Sex and Social Justice," "Women and Human Development," and "Creating Capabilities," provides a philosophically grounded framework for evaluating the

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justice of social arrangements by asking what each person is actually able to do and to be, rather than simply what formal rights they possess.

Nussbaum's list of central human capabilities includes life, bodily health, bodily integrity, senses, imagination, and thought, emotions, practical reason, affiliation, other species, play, and control over one's political and material environment. Each of these capabilities represents a fundamental requirement of a life of human dignity, and a just society is one that ensures that all its members have genuine access to each of these capabilities at a threshold level. A society that denies its members access to any central capability at a minimally adequate level is, on this framework, an unjust society, regardless of whether it formally guarantees the relevant rights on paper.

Applied to the situation of Hindu women in Bangladesh under the current personal law regime, the capabilities approach yields a powerful and specific indictment. The denial of equal inheritance rights directly undermines the capability of control over one's material environment, the ability of Hindu women to own, inherit, and manage property. The absence of divorce leaves Hindu women in abusive or failed marriages without the capability of bodily integrity, the ability to control what happens to their bodies and to be free from violence and coercion. The inferior guardianship rights of Hindu mothers directly undermine the capability of affiliation, the ability to live with concern for and in relation to others. And the overall system of legal subordination that these specific denials constitute undermines the most fundamental capability of all: that of practical reason, the ability to form a conception of the good and to engage in critical reflection about the planning of one's own life.

The capabilities approach has a further advantage over the purely formal rights framework in the context of the reform project: it naturally directs attention to the conditions that are necessary for capabilities to be genuinely exercised rather than merely formally available. It is not enough, on the capabilities framework, to grant Hindu women equal inheritance rights on paper if social pressure, lack of legal knowledge, or economic dependence on male relatives prevents them from actually claiming those rights in practice. A genuinely adequate reform must address not only the formal legal rules but the social, economic, and institutional conditions that determine whether the formal rules translate into genuine capability for the women they are meant to benefit.

1.4 Postcolonial Jurisprudence and the Decolonization of Hindu Law

The postcolonial jurisprudential framework introduced in Part One receives its fullest significance at the level of the final synthesis. The argument that the Hindu personal law currently operative in Bangladesh is not simply the ancient law of the Dharmasastras but a colonial construction, shaped by the administrative needs and the intellectual frameworks of British imperial governance, has been developed and elaborated throughout the treatise. At the synthesis stage, the implications of this argument for the reform project can be stated with full clarity.

The decolonization of Hindu personal law in Bangladesh requires not merely the technical reform of specific legal rules but a fundamental rethinking of the intellectual foundations on which the current system rests. It requires interrogating the assumption, deeply embedded in the colonial legal heritage, that Hindu law is essentially a textual tradition to be mined from Sanskrit sources rather than a living customary practice to be understood through engagement with actual community life. It requires questioning the privileged status of the Dayabhaga school in Bengali legal life, a privilege that was partly a product of colonial administrative convenience rather than purely of the community's own jurisprudential preferences. It requires acknowledging that the colonial courts' method of applying Hindu law, treating it as a kind of statutory code derived from authoritative texts, distorted both the nature of the tradition and the character of the reforms it needed.

A decolonized Hindu personal law for Bangladesh would be one that takes seriously the actual practices, values, and needs of the Hindu community in Bangladesh today rather than reconstructing them from texts written in a different century and a different civilization. It would be one that is made by and with the community rather than being imposed on it by external administrative authority, whether colonial or post-colonial. And it would be one that embodies the community's own deepest values, including its values of Dharmic justice, cosmic order, and the dignity of all persons as children of the divine, rather than being merely a translation of external standards into the vocabulary of traditional law.

This vision of a decolonized Hindu personal law is both the most philosophically ambitious and the most politically realistic formulation of the reform project, because it is the one most likely to achieve genuine community ownership of the reform rather than generating the resistance that externally imposed change typically produces.

CHAPTER TWO: THE JURISPRUDENTIAL SYNTHESIS: PERSONAL LAW, CONSTITUTIONAL PRINCIPLE, AND THE THEORY OF TRANSFORMATIVE REFORM

2.1 Personal Law and Constitutional Equality: The Central Tension

The central jurisprudential tension of this entire treatise is the tension between the principle of personal law, which holds that members of different religious communities may be governed by different substantive rules in domains of personal and family life, and the constitutional principle of equality, which holds that all citizens are entitled to equal treatment under the law regardless of their religious identity. This tension is not unique to Bangladesh; it is a structural feature of any legal system that simultaneously maintains religious personal law and constitutional equality guarantees. But it takes a particular and particularly acute form in Bangladesh because of the extreme degree of the inequality perpetuated by the unreformed Hindu personal law and because of the constitutional commitments that Bangladesh has undertaken both domestically and in its international obligations.

The resolution of this tension that this treatise has argued for, and that the jurisprudential analysis of multiple Parts has elaborated and defended, is what might be called the transformative constitutionalism resolution. This resolution holds that the constitutional principle of equality does not require the elimination of all differences in legal treatment on grounds of religious identity, but it does require that any such differences be consistent with the fundamental dignity and equal worth of all persons. A personal law system that denies women equal inheritance rights, that provides no mechanism for the dissolution of marriages, and that assigns inferior guardianship status to mothers is not merely different from the rules applicable to members of other communities; it is a system that treats Hindu women as less than fully equal persons, as beings whose capacity for autonomous self-determination is less worthy of legal protection than that of their Muslim or Christian or secular counterparts. Such a system cannot be saved by appeal to cultural difference or religious freedom; it violates the constitutional equality principle at its core.

The transformative constitutionalism resolution also implies an affirmative obligation on the state, not merely a negative obligation to refrain from enacting discriminatory legislation but a positive obligation to reform existing discriminatory law. The principle of transformative constitutionalism, developed in the South African context by Karl Klare and elaborated by scholars like Upendra Baxi and Dennis Davis, holds that a constitution committed to fundamental social transformation, as Bangladesh's constitution is in its aspiration toward a just and egalitarian social order, imposes on the state not merely the obligation to respect rights but the obligation to actively create the conditions for their realization. Applied to the situation of Hindu personal law in Bangladesh, this means that the state's failure to reform discriminatory rules is not merely a passive omission but an active contribution to the perpetuation of injustice, one that the constitutional commitment to equality requires it to remedy.

2.2 The Dayabhaga System in the Light of Transformative Constitutionalism

The Dayabhaga system of succession, which has been analyzed in elaborate detail in Part Three and subsequent Parts, provides perhaps the clearest illustration of the application of the transformative constitutionalism framework to the specific content of Hindu personal law in Bangladesh. The Dayabhaga system's grounding of succession rights in the spiritual efficacy of the heir's ability to offer pinda, the ritual food offering to the souls of the deceased, is a jurisprudential framework that was coherent and internally consistent within the cosmological and theological context of medieval Bengal. But it is a framework that produces, when applied to the inheritance rights of women, consequences that are entirely incompatible with constitutional equality: women's inferior position in the pinda ceremony translates directly into inferior inheritance rights, creating a system in which a woman's legal status in her own family is determined by her ritual status in a religious ceremony rather than by her human dignity as an equal member of that family.

The transformative constitutionalism critique of the Dayabhaga system is not that it is wrong from within the framework of Hindu cosmology. Within that framework, the connection between ritual efficacy and inheritance rights may have been perfectly coherent. The critique is that the constitutional order of Bangladesh does not operate within the framework of Hindu cosmology.

It operates within a framework in which all citizens are equal before the law regardless of their sex, their religion, or their ritual status. The application of the Dayabhaga system's ritual-based hierarchy to the inheritance rights of Hindu women in the constitutional order of Bangladesh is therefore not a legitimate expression of religious legal tradition but a violation of the constitutional equality principle, which does not admit of exceptions based on the internal logic of any particular religious cosmology.

This argument, carefully developed, provides the constitutional courts of Bangladesh with a powerful basis for judicial intervention in the absence of legislative action, and it provides the legislature with the constitutional justification for reform legislation that overrides the existing Dayabhaga rules. It is the core constitutional argument of the reform project, and it is an argument that is both legally sound and philosophically defensible.

2.3 The Theory of Legal Gradualism and the Sequencing of Reform

One of the most important jurisprudential contributions of this treatise to the practical reform project is the development of a theory of legal gradualism that provides guidance on how comprehensive reform can be achieved in stages without sacrificing the coherence of the overall reform project. The theory of legal gradualism holds that comprehensive legal reform is typically achieved not through a single grand legislative act but through a series of incremental steps, each of which addresses a specific injustice, builds on the previous achievements, and creates the political and legal conditions for the next step.

The Indian experience with Hindu code reform, discussed in multiple Parts, is the primary model for this theory of gradualism. India's reform was not achieved in a single stroke but through a series of legislative acts over several years: the Hindu Marriage Act of 1955, the Hindu Succession Act of 1956, the Hindu Minority and Guardianship Act of 1956, and the Hindu Adoptions and Maintenance Act of 1956. Each of these acts addressed a specific domain of Hindu personal law, and together they constituted a comprehensive reform. The strategy was gradualist in execution but comprehensive in vision: the reformers knew from the beginning what the whole picture would look like, but they achieved it by moving one domain at a time, in an order that reflected both the urgency of specific injustices and the political feasibility of specific reforms.

Applied to the Bangladeshi context, the theory of legal gradualism suggests a reform sequencing in which the most urgent and most politically achievable reforms are pursued first, while the foundations for subsequent more challenging reforms are being built. The most urgent and most achievable reform is the introduction of a legal mechanism for the dissolution of Hindu marriages, because the complete absence of any divorce right is the single most acute injustice of the current system, it is the reform most clearly demanded by constitutional equality principles and international human rights law, it affects the maximum number of Hindu women directly, and it is the reform for which there is the strongest community support across generational, class, and ideological divisions within the Hindu community.

The second priority in the gradualist sequence should be the reform of Hindu succession law to give daughters equal inheritance rights with sons and to give widows absolute ownership rather than a limited estate. This is a reform that is clearly required by constitutional equality and by Bangladesh's international obligations, that has been accomplished in India since 1956, and that would substantially improve the material security of the large number of Hindu women who are currently denied their fair share of family property under the Dayabhaga rules.

The third priority should be the reform of the guardianship and custody rules to give mothers equal rights with fathers in matters affecting their children. This reform is required by constitutional equality, by the Convention on the Rights of the Child to which Bangladesh is a party, and by the CEDAW obligations that Bangladesh has undertaken.

The fourth priority should be the comprehensive codification of the reformed law in a single statute, or a coordinated set of statutes analogous to India's four Hindu code acts, that provides a clear, accessible, and non-discriminatory legal framework governing all aspects of Hindu personal law in Bangladesh.

Each of these reforms can be pursued independently if necessary, but together they constitute a comprehensive transformation of the legal situation of Bangladesh's Hindu community that is consistent with both constitutional equality and the genuine values of the Hindu tradition.

2.4 The Judicial Path and the Legislative Path: An Integrated Theory

Throughout this treatise, the relationship between judicial and legislative paths to reform has been a recurring theme. The analysis in Part Thirteen of the Shishubar Dhali judgment and its implications for judicial activism in Hindu succession law, and the analysis in Part Nine of transformative constitutionalism, have provided detailed examination of how the courts can contribute to the reform project. The synthesis at this stage requires an integrated theory of the judicial and legislative paths that clarifies both their distinct contributions and their necessary complementarity.

The judicial path to reform has the advantage of accessibility and speed in specific cases: a well-crafted constitutional challenge to a specific discriminatory provision of Hindu personal law, brought before the High Court Division of the Supreme Court of Bangladesh, can produce an authoritative judicial ruling without waiting for the legislative process to produce reform legislation. The Shishubar Dhali decision demonstrates that such judicial intervention is possible and that it can produce meaningful outcomes for specific litigants. Constitutional PIL (Public Interest Litigation), already a part of the Bangladeshi legal landscape, provides a vehicle for raising systemic challenges to the entire structure of Hindu personal law discrimination rather than merely seeking relief in individual cases.

But the judicial path has limits. Judicial decisions are necessarily retrospective, addressing specific situations that have already arisen rather than providing the prospective legal clarity that would allow Hindu community members to plan their affairs with confidence. Judicial decisions are limited in their scope to the specific legal questions raised in specific cases, which means that

systematic reform through litigation requires the careful orchestration of a series of cases, each addressing a different aspect of the discriminatory structure, over an extended period. And judicial decisions that go significantly beyond the existing statutory and textual framework risk challenges on grounds of judicial overreach that can undermine their authority and their practical effect.

The legislative path to reform has the advantage of comprehensiveness and democratic legitimacy: a statute enacted by the Bangladesh National Assembly is comprehensive in its scope, prospective in its application, democratically authorized, and clear in its command. But it requires the political conditions that have consistently been absent in Bangladesh: a government with the will to reform, a legislative majority supportive of reform, and a civil society organized and powerful enough to create the political incentives for legislative action.

The integrated theory of the reform path holds that judicial and legislative action are most effective in combination and in sequence. Judicial decisions that identify specific constitutional violations in the current Hindu personal law system create the political pressure and the legal authority for legislative reform. Legislative reform that enacts comprehensive codification of the reformed law provides the clear statutory framework that courts can interpret and apply consistently over time. The relationship between the two paths is therefore not one of competition but of mutual reinforcement: courts push the legislature toward reform by identifying constitutional violations, and the legislature provides the clear statutory framework that allows courts to apply the reformed law consistently and predictably.

CHAPTER THREE: THE CONSTITUTIONAL ARGUMENT IN FULL: A FINAL STATEMENT

3.1 The Constitutional Equality Principle and Its Application to Hindu Personal Law

The constitutional argument for Hindu personal law reform in Bangladesh has been developed in detail in Part Five and subsequent Parts. At this final synthesis stage, the argument can be stated in its strongest and most complete form.

Article 27 of the Constitution of Bangladesh provides that all citizens are equal before law and are entitled to equal protection of law. Article 28(1) provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth. Article 28(2) provides that women shall have equal rights with men in all spheres of the State and of public life. Article 28(4) provides that nothing in Article 28 shall prevent the State from making special provision in favour of women or children or for the advancement of any backward section of citizens.

The argument that these constitutional provisions require the reform of Hindu personal law proceeds through several steps, each of which is independently compelling and which together constitute an argument of significant force.

The first step is the argument from formal equality. The Hindu personal law currently operative in Bangladesh grants women systematically inferior inheritance rights compared to men, provides no mechanism for women to dissolve marriages that are harmful or simply failed, and gives mothers inferior guardianship rights compared to fathers. Each of these rules is a discrimination on grounds of sex that is prohibited by Articles 27 and 28 of the Constitution. The fact that the discrimination is embedded in a religious personal law system rather than in general civil legislation does not immunize it from constitutional scrutiny: the Constitution's equality guarantees apply to all legal rules, regardless of their source or their religious characterization.

The second step is the argument from substantive equality. Even if the formal inequality argument were somehow avoidable, the substantive reality of Hindu women's legal situation in Bangladesh fails the constitutional equality standard. Constitutional equality is not merely about formal sameness of treatment but about the genuine equal worth and dignity of all citizens. A legal system that, in practice, leaves Hindu widows without means of support, that denies Hindu daughters their fair share of family property, and that traps Hindu women in abusive marriages without any legal remedy treats Hindu women as less than fully equal persons in their own constitutional order. This is incompatible with the fundamental principle of equal dignity that underlies the Constitution's equality provisions.

The third step is the argument from positive obligation. The constitutional commitment to equality does not merely prohibit the state from enacting discriminatory laws; it obliges the state to reform existing discriminatory laws. The failure of successive Bangladeshi governments to reform Hindu personal law is not merely a passive omission; it is an active choice to maintain a system of legal discrimination, a choice that is inconsistent with the state's constitutional obligations. As the High Court of Bangladesh held in the May 2023 order asking the government to explain why the deprivation of Hindu women's rights regarding divorce, guardianship, and equal property inheritance should not be considered illegal, the constitutional courts have the power and the responsibility to call the government to account for this failure.

The fourth step is the argument from the unconstitutionality of the personal law exception. Some legal systems that maintain religious personal law alongside constitutional equality guarantees insert an explicit exception into the equality provision, exempting personal law from constitutional scrutiny. Bangladesh's Constitution does not contain such an exception. The personal law applicable to Hindus in Bangladesh is therefore fully subject to constitutional scrutiny under Articles 27 and 28, and any provision of that law that fails the constitutional equality standard is unconstitutional and subject to judicial invalidation or judicial direction to the legislature to enact reform.

The fifth step is the argument from international obligations. Bangladesh's CEDAW obligations, its ICCPR obligations, and its obligations under other international human rights treaties to which it is a party all require the elimination of discrimination against women in matters of inheritance, marriage, divorce, and guardianship. As established in Part Fifteen, Bangladesh's CEDAW reservations do not exempt Hindu personal law from these obligations. The state's failure to reform discriminatory Hindu personal law is therefore not merely a constitutional

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violation but also a breach of its international obligations, a fact that strengthens the case for judicial intervention and for legislative reform.

3.2 The Minority Rights Dimension of the Constitutional Argument

The constitutional argument for reform also has a dimension that is specifically about the constitutional rights of religious minorities rather than specifically about gender equality. Article 41 of the Constitution of Bangladesh guarantees freedom of religion, including the freedom to practise and propagate religion. Article 28(1) prohibits discrimination on grounds of religion as well as on grounds of sex. These provisions together create a constitutional framework in which the state is obligated both to protect the religious freedom of its citizens, including the religious freedom of the Hindu minority, and to ensure that members of that minority are not discriminated against on grounds of their religious identity.

The argument from minority rights holds that the state's failure to reform Hindu personal law, leaving Hindu citizens governed by a uniquely archaic and discriminatory legal regime while Muslim citizens benefit from a personal law that has at least been partially modernized and codified, is itself a form of discrimination against the Hindu minority. Hindu citizens are denied the benefit of a modern, codified, clearly comprehensible personal law system that their Muslim counterparts, imperfectly, enjoy. The state's systematic neglect of the reform needs of the Hindu community's personal law is incompatible with its constitutional obligation to treat all citizens without discrimination on grounds of religion.

This argument from minority rights discrimination is distinct from but complementary to the argument from gender equality. It creates a constitutional claim on behalf of the Hindu community as a whole, including its male members, that the state has failed in its obligation to provide the community with the kind of modern, codified, clearly comprehensible personal law system that constitutional equality requires. The two arguments together cover the full range of constitutional violations embedded in the current legal situation.

3.3 The Role of Constitutional Courts in the Reform Process

The Bangladesh Supreme Court, and specifically its High Court Division, has a crucial role to play in the reform process, both as a forum for constitutional litigation and as an institution whose pronouncements on the constitutional deficiencies of Hindu personal law can create political pressure for legislative action. The Court's capacity for this role has been demonstrated by a series of significant interventions, including the May 2023 order asking the government to explain the deprivation of Hindu women's rights and the Shishubar Dhali decision analyzed in Part Thirteen.

The most important single action that could advance the reform project in the immediate term is the filing of a comprehensive constitutional petition before the High Court Division challenging the constitutionality of the most clearly discriminatory provisions of Hindu personal law, specifically the denial of equal inheritance rights to daughters and widows, the absence of any divorce mechanism, and the inferior guardianship status of mothers. Such a petition, if crafted by

skilled constitutional lawyers drawing on the full range of arguments developed in this treatise, would give the Court the opportunity to make a comprehensive constitutional ruling that could simultaneously invalidate the most egregious discriminatory provisions and issue a directive to the legislature to enact comprehensive reform legislation within a specific timeframe.

The model for such constitutional intervention is readily available in comparative jurisprudence. The Indian Supreme Court's direction in the context of uniform civil code debates, the Nepali Supreme Court's orders on personal law reform, the South African Constitutional Court's decision in the Bhe case invalidating customary law rules of succession that excluded women, all demonstrate that constitutional courts in common law systems have both the power and the willingness to intervene decisively in the domain of personal law when the constitutional equality standard is clearly violated.

CHAPTER FOUR: THE POLITICAL ANALYSIS: CONDITIONS, STRATEGIES, AND THE PROSPECT OF REFORM IN 2026

4.1 The Current Political Landscape: Opportunity and Constraint

The political landscape in which the reform project must operate in 2026 is one of both unusual opportunity and significant constraint. The unusual opportunity is created by the post-August 2024 political transformation: the fall of the Hasina government, the establishment of the interim government under Muhammad Yunus, the initiation of a comprehensive constitutional reform process, and the creation of multiple reform commissions including the Women's Affairs Reform Commission that recommended inheritance law reform in April 2025. These developments have created a political moment, a window of constitutional openness, in which fundamental reforms that would have been politically impossible under the Hasina government have become at least politically discussable.

The significant constraint is created by the mobilization of the conservative Islamic movement in response to the reform proposals. The rally of nearly 20,000 Hefazat-e-Islam supporters in protest of the Women's Affairs Reform Commission's recommendations, the increasing political influence of Islamist parties in the post-Hasina political landscape, and the continued climate of communal violence against the Hindu community all represent obstacles to the kind of reform program that this treatise has advocated. The Bangladesh government of Muhammad Yunus is navigating between the demands of international human rights institutions and reform-oriented civil society on one side and the pressure of Islamist mobilization on the other, and its capacity to commit to controversial legal reforms in the current political climate is limited.

The assessment of the realistic prospects for reform in this political landscape requires distinguishing between different components of the reform program and assessing the political feasibility of each component separately.

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4.2 The Reform Commission Process and Its Potential

The interim government's establishment of multiple reform commissions, including the Women's Affairs Reform Commission, the Constitutional Reform Commission, the Judicial Reform Commission, and others, represents a potentially significant institutional vehicle for the reform project. The Women's Affairs Reform Commission's April 2025 recommendation to reform inheritance laws was a specific endorsement of the principle of equal inheritance rights that applies with full force to Hindu personal law as well as to Muslim personal law.

The Constitutional Reform Commission is particularly significant for the Hindu personal law reform project. If the commission's recommendations include constitutional provisions that explicitly address the relationship between personal law and constitutional equality, or that create an explicit obligation on the state to reform discriminatory personal law, this would provide a stronger constitutional foundation for both judicial and legislative reform than the current constitutional text, which is silent on the specific question of personal law.

The engagement of the reform commissions process by advocates for Hindu personal law reform requires both direct advocacy before the relevant commissions and strategic alliance-building with other reform movements. The Women's Affairs Reform Commission's recommendations addressed the rights of women across religious communities, and the engagement of Hindu women's organizations in the commission process, ensuring that the specific dimensions of the Hindu personal law situation are prominently represented in the commission's deliberations and recommendations, is both important and achievable.

The coalition between advocates for Hindu personal law reform and advocates for Muslim personal law reform on questions of women's inheritance rights and divorce is particularly strategically important. The principle that daughters should inherit equally with sons, and that women should have access to divorce rights, applies with equal force across religious communities, and the political case for reform is strengthened when it is made simultaneously for all communities rather than being framed as a purely minority-specific demand.

4.3 The Electoral Dimension and the Question of Political Parties

Any realistic assessment of the prospects for Hindu personal law reform in Bangladesh must engage with the question of how the major political parties stand on the issue and what prospects exist for making the reform a significant political commitment.

The post-Hasina political landscape in Bangladesh is one in which the two major political forces are the Bangladesh Nationalist Party and the Jamaat-e-Islami, along with a number of smaller parties. The BNP's historical relationship with the Hindu community has been complex: the party has at times been supportive of minority rights in principle while failing to act on that principle when in government, and at other times has been associated with anti-minority violence and discrimination. The Jamaat-e-Islami's position on Hindu personal law reform is predictably negative: the party's Islamist ideology makes it strongly resistant to any reform that could be characterized as advancing secular or progressive values at the expense of religious tradition.

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The Hindu community's political options in this landscape are limited but not nonexistent. The concentration of the Hindu community in certain geographic areas, particularly in Khulna, Barisal, Sylhet, and the southern delta region, gives it potential electoral significance in a number of parliamentary constituencies. Political parties that seek to represent those constituencies have some incentive to address the concerns of their Hindu constituents, including the demand for personal law reform.

The international dimension is also relevant here: a political party that commits to Hindu personal law reform can present that commitment as evidence of its commitment to constitutional democracy, international human rights standards, and the protection of minority rights, all of which are valued by the international community and by Bangladesh's international partners in ways that have practical economic and diplomatic significance.

4.4 The Role of Civil Society and the Legal Profession

The Bangladesh civil society and legal profession have been consistent advocates for Hindu personal law reform, and their role in the current political moment is crucial. Organizations like Ain O Shalish Kendra, the Bangladesh Legal Aid and Services Trust, the Bangladesh National Woman Lawyers Association, and a range of other civil society organizations have documented the specific injustices of Hindu personal law, provided legal aid to affected women, and advocated for legislative reform. The legal profession, through the Supreme Court Bar Association and other professional bodies, has engaged with the constitutional and jurisprudential dimensions of the reform project.

The critical need in the current political moment is for these civil society and legal professional forces to coordinate their advocacy more effectively, to speak with a more unified voice on the specific reform demands, and to engage more strategically with the reform commission process and with the political parties that will ultimately determine whether reform legislation is enacted. The development of a coordinated civil society coalition for Hindu personal law reform, bringing together women's organizations, legal professionals, minority rights advocates, and constitutional lawyers, and adopting a shared reform agenda based on the kind of analysis developed in this treatise, would significantly strengthen the reform effort.

The academic and research community also has an important role to play. The production of rigorous, well-documented legal scholarship that advances the constitutional and comparative arguments for reform, that analyses specific reform proposals in the light of the Bangladeshi legal and constitutional context, and that is accessible to policymakers, judges, and legislators, is a form of intellectual advocacy for reform that complements the practical and political advocacy of civil society organizations.

CHAPTER FIVE: THE LEGISLATIVE BLUEPRINT: A COMPREHENSIVE REFORM AGENDA

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5.1 Principles for a Hindu Personal Law Reform Act of Bangladesh

The centerpiece of the legislative reform agenda is the enactment of a comprehensive Hindu Personal Law Reform Act of Bangladesh that addresses all the major domains of Hindu personal law: marriage, divorce, inheritance, adoption, guardianship, and maintenance. This chapter sets out the principles that should govern such legislation, the specific provisions that are most urgently needed, and the legislative drafting approach that would best serve the objectives of the reform.

The first principle is codification: the reformed law should be embodied in a clear, accessible, and comprehensive statutory text that replaces the current system of uncodified rules derived from Sanskrit texts and colonial judicial decisions. Codification is not merely a technical legal improvement; it is a requirement of the rule of law itself. People should be able to know what law governs their personal affairs without having to retain a specialist in ancient Sanskrit jurisprudence. A codified law, drafted in clear and accessible language and available in Bangla, is a prerequisite for the kind of informed community engagement with the law that a democratic legal order requires.

The second principle is equality: every provision of the reformed law should be consistent with the constitutional principle of equality between men and women. This means equal inheritance rights for daughters and sons, equal rights of mothers and fathers in guardianship and custody, equal access to divorce for husbands and wives, and equal maintenance rights for all dependents regardless of gender. Any provision of the existing law that fails this equality test should be eliminated or reformed.

The third principle is cultural sensitivity: the reformed law should engage with the specific cultural and religious traditions of the Hindu community in Bangladesh rather than simply transplanting the legal rules of another jurisdiction. This means, among other things, recognizing the specific forms and ceremonies of Hindu marriage, acknowledging the significance of family and community relationships in Hindu cultural life, and framing reform provisions in terms that resonate with the values of the community rather than in terms that are experienced as alien impositions.

The fourth principle is practicability: the reformed law should be designed in a way that makes it practically enforceable in the conditions of Bangladesh, including in rural areas where access to courts and legal information is limited. This means not only codifying the substantive rules but also providing for accessible enforcement mechanisms, legal aid for those who cannot afford legal representation, and community-level dispute resolution processes that are consistent with the reformed law's equality principles.

The fifth principle is comprehensiveness within flexibility: the reformed law should provide a comprehensive framework for all aspects of Hindu personal law, while building in sufficient flexibility to accommodate the genuine diversity of Hindu communities in Bangladesh, including their varying local customs and practices, provided that such customs do not violate the reformed law's equality principles.

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5.2 The Hindu Marriage Reform Act: Specific Provisions

The reform of Hindu marriage law is the most urgent component of the legislative agenda, and specifically the introduction of a legal mechanism for the dissolution of Hindu marriages. The Hindu Marriage Reform Act proposed here would address the following specific matters.

On the question of divorce, the Act should provide for both fault-based and no-fault divorce grounds. The fault-based grounds should include adultery, cruelty (physical and mental), desertion, conversion to another religion, certain specified sexual offences, incurable insanity, and communicable diseases. The no-fault ground should be irretrievable breakdown of marriage, to be established by a period of separation of not less than two years or by mutual consent. Both spouses should have equal access to these divorce grounds, and the procedure for divorce should be available in the Family Courts established under the Family Courts Ordinance of 1985.

On the question of judicial separation, the Act should provide for judicial separation on any of the divorce grounds as an alternative to divorce for those who, for religious or personal reasons, do not wish to dissolve the marriage permanently.

On the question of restitution of conjugal rights, the Act should retain this remedy but make it available equally to both spouses and clarify that it cannot be enforced in a manner inconsistent with the constitutional protection of bodily integrity.

On the question of marriage conditions, the Act should clarify that the essential conditions for a valid Hindu marriage include the free and full consent of both parties, the achievement of minimum ages of marriage consistent with Bangladesh's Child Marriage Restraint Act, and absence of a degree of relationship that the Act specifies as prohibited. The Act should abolish the requirement of caste compatibility and should explicitly provide that a Hindu marriage is valid regardless of the caste, sub-caste, or gotra of the parties.

On the question of marriage registration, the Act should make registration of Hindu marriages mandatory rather than optional, as it currently is under the Hindu Marriage Registration Act of 2012, and should provide specific civil consequences for non-registration, including the inability to invoke certain marital rights in proceedings before courts and administrative bodies.

On the question of maintenance and alimony, the Act should provide for spousal maintenance both during the marriage in cases of separation and after dissolution, based on the respective economic circumstances of the parties and the contributions made by each to the family. The quantum of maintenance should not be limited by reference to the modest sums traditionally associated with Hindu women's maintenance under the uncodified law.

5.3 The Hindu Succession Reform Act: Specific Provisions

The reform of Hindu succession law, the second component of the legislative agenda, requires a comprehensive rewriting of the inheritance rules that currently apply to Bangladesh's Hindu

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community under the Dayabhaga system. The Hindu Succession Reform Act proposed here would establish the following framework.

On intestate succession, the Act should establish a clear order of heirs that applies equally to male and female decedents, that gives daughters equal rights with sons, that gives widows and widowers equal rights as surviving spouses, and that ensures that female heirs inherit as absolute owners rather than as limited estate holders. The specific order of succession proposed, drawing on the Indian model while adapting it to the Bangladeshi context, would give first priority to the surviving spouse and children in equal shares, second priority to parents and siblings, and further priority to more remote relatives in a clearly specified sequence.

On the abolition of the limited estate, the Act should specifically and explicitly abolish the concept of the Hindu widow's limited estate. A Hindu widow should inherit her husband's property as an absolute owner with full power of disposition, not as a life tenant whose interest is subject to the claims of reversioners.

On the abolition of the right of reversioners, the Act should specifically abolish the right of reversioners to challenge any act of a female heir that they characterize as a "waste" of the limited estate. The concept of the reversioner, which has been used as a mechanism of family pressure and legal harassment of widows and other female heirs, has no place in a reformed Hindu succession law grounded in equal ownership rights.

On testamentary succession, the Act should confirm the right of every Hindu adult to dispose of their property by will without restriction, subject only to reasonable provisions for dependent family members. The Act should abolish any remaining restrictions on the testamentary power of Hindu women that may exist under the uncodified law.

On joint family property, the Act should address the specific question of coparcenary or joint family property under the Dayabhaga system. While the Dayabhaga system has a somewhat different structure for joint family property than the Mitakshara system, there are joint family arrangements among Bangladeshi Hindus that require clear statutory treatment. The Act should provide that daughters are equal coparceners with sons in any joint family property, consistent with the principle of equal inheritance established by the Indian Supreme Court in Vineeta Sharma and its 2005 legislative antecedent.

5.4 The Hindu Guardianship and Adoption Reform Act: Specific Provisions

The third legislative component of the reform agenda addresses guardianship, custody, and adoption, domains of Hindu personal law in which the current law is particularly deficient in its treatment of mothers and female family members.

On the question of natural guardianship, the Act should establish that both the father and the mother are natural guardians of their minor children, with equal rights and responsibilities. This replaces the current rule that gives the father priority as natural guardian and treats the mother's guardianship as derivative of the father's or as available only in specified circumstances. The

equal natural guardianship principle is consistent with both constitutional equality and Bangladesh's obligations under the Convention on the Rights of the Child.

On the question of custody in cases of parental separation or divorce, the Act should establish that the paramount consideration in custody decisions is the welfare and best interests of the child, with the mother and father being considered equally eligible as custodians. The Act should abolish any presumption in favour of the father in custody disputes and should replace it with a welfare-based assessment that considers, among other factors, the child's established attachment relationships, the child's own wishes as appropriate to their age and maturity, each parent's ability to provide care, and the importance of maintaining the child's relationship with both parents.

On the question of adoption, the Act should provide a modern statutory framework for Hindu adoption that is consistent with the principles of child welfare, that eliminates the traditional requirement that the adoptee be a male of specified caste and age, and that allows for the adoption of female children and of children regardless of caste. The Act should address the specific religious and ritual dimensions of Hindu adoption, such as the ceremony of datta homam, in a way that respects their cultural significance while making clear that ritual compliance is not a legal requirement for the validity of an adoption.

5.5 The Hindu Maintenance Reform Act: Specific Provisions

Maintenance, the obligation of economically stronger family members to provide financial support to economically dependent family members, is a domain of Hindu personal law that requires specific legislative attention, particularly in the context of the reform of marriage and succession law.

The Hindu Maintenance Reform Act should establish a clear statutory right of maintenance that applies to spouses, to dependent children, to dependent parents, and to other specified dependents. The right of maintenance should be equal as between male and female dependents: a wife is entitled to maintenance from a husband, and a husband is entitled to maintenance from a wife, in both cases based on economic need and the other party's capacity to provide. The Act should specify the factors relevant to the determination of the quantum of maintenance, including the standard of living of the parties during their marriage, the economic needs of the dependent, the income and assets of the party from whom maintenance is sought, and any contributions made by the dependent to the family's welfare.

The Act should also provide for the enforcement of maintenance orders through the Family Courts and should establish procedures for the variation of maintenance orders when circumstances change.

CHAPTER SIX: THE COURTS AND REFORM: BUILDING THE JURISPRUDENTIAL ARCHITECTURE

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6.1 Developing a Strategic Litigation Plan

The judicial path to Hindu personal law reform requires a strategic litigation plan that is developed with the same level of care and coordination as the legislative advocacy strategy. Strategic litigation for fundamental legal reform is not simply the pursuit of individual clients' interests in specific cases; it is the deliberate orchestration of cases that present the constitutional and legal issues most clearly, that build a body of precedent most useful for the overall reform project, and that create the most effective combination of judicial and political pressure for legislative action.

The first component of a strategic litigation plan for Hindu personal law reform in Bangladesh would be the identification and development of test cases in each of the key reform domains. In the domain of divorce, the ideal test case would involve a Hindu woman trapped in a demonstrably abusive or failed marriage who seeks dissolution of the marriage and is denied any legal remedy under the current law. The case would challenge the constitutional validity of the complete absence of any divorce mechanism for Hindus, arguing that this absence violates Articles 27, 28, and 31 of the Constitution and Bangladesh's obligations under CEDAW and the ICCPR.

In the domain of inheritance, the ideal test case would involve a Hindu daughter or widow who is denied her equal share of family property under the Dayabhaga rules, and who challenges the constitutional validity of those rules on the grounds that they discriminate on the basis of sex in violation of Article 28 of the Constitution. The precedent of the High Court's May 2023 order asking the government to explain the deprivation of Hindu women's rights provides a foundation on which such a case could build.

In the domain of guardianship, the ideal test case would involve a Hindu mother who is denied equal guardianship rights over her children in favor of the father or his relatives, and who challenges the constitutional validity of the Dayabhaga guardianship rules that subordinate the mother's rights to the father's.

Each of these test cases should be developed with the involvement of experienced constitutional lawyers, with access to the best available comparative legal research, and with explicit reliance on both the constitutional arguments and the international human rights arguments developed throughout this treatise.

6.2 Constitutional PIL as a Reform Tool

Public interest litigation, as a legal instrument for fundamental social reform, has had a remarkable history in South Asia. The Indian Supreme Court's development of an expansive PIL jurisdiction beginning in the 1980s, the Bangladeshi High Court's own significant PIL jurisprudence on issues ranging from environmental rights to the rights of women workers, and the use of PIL by the Nepal Supreme Court to drive personal law reform have all demonstrated that constitutional courts can serve as partners in the project of legal transformation when the legislative process has failed.

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The constitutional PIL that would most effectively advance the Hindu personal law reform project in Bangladesh would be a comprehensive petition that challenges the constitutional validity of the entire structure of Hindu personal law discrimination in one set of proceedings, rather than through a series of individual cases each addressing a single aspect of the discrimination. Such a comprehensive PIL would name as respondents the Government of Bangladesh, the Ministry of Law, Justice and Parliamentary Affairs, and the Ministry of Religious Affairs, and would seek relief in the form of a declaration that the existing discriminatory provisions of Hindu personal law are unconstitutional and an order directing the legislature to enact comprehensive reform legislation within a specified period, with interim directions to the courts in the meantime to apply constitutional equality principles in all cases involving the personal law rights of Hindu women.

The constitutional arguments for such a PIL are set out in Chapter Three of this Part. The practical preparation for such a PIL requires the assembly of a legal team with expertise in constitutional litigation, the documentation of specific cases of injustice resulting from the discriminatory provisions, the preparation of expert affidavits on the comparative legal situation and the constitutional law of personal law reform, and the identification of appropriate petitioners who can represent the full range of the affected community.

6.3 The High Court's Existing Jurisprudence and How to Build on It

The existing jurisprudence of the Bangladesh High Court on issues of constitutional equality and personal law is an important resource for the strategic litigation plan. The Court's 2023 order asking the government to explain the deprivation of Hindu women's rights is the most significant recent development, but it builds on a longer tradition of constitutional engagement with personal law issues in the Court.

Building on this existing jurisprudence requires careful doctrinal analysis of the reasoning in existing decisions, identification of the constitutional arguments that the Court has accepted and those it has not yet addressed, and strategic choices about how to develop the jurisprudence in a direction that is most useful for the overall reform project. It also requires attention to the composition of the Court and to the individual judges whose backgrounds, training, and judicial philosophies make them more or less likely to be receptive to constitutional challenges to discriminatory personal law.

CHAPTER SEVEN: THE DRAFT HINDU PERSONAL LAW (REFORM AND CODIFICATION) ACT, BANGLADESH: A MODEL LEGISLATIVE FRAMEWORK

7.1 Preliminary Provisions and Statement of Objects

A comprehensive reform legislation for Hindu personal law in Bangladesh should begin with a clear statement of objects that situates the legislation in its constitutional, jurisprudential, and historical context. The statement of objects proposed here is as follows.

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An Act to reform, codify, and modernize the personal law applicable to Hindus in Bangladesh, to ensure that such law is consistent with the constitutional principles of equality and non-discrimination, to fulfil Bangladesh's obligations under international human rights law, to provide clear and accessible legal rules for the governance of Hindu personal affairs, and for matters connected therewith.

WHEREAS the Constitution of Bangladesh guarantees to all citizens equal protection of law and prohibits discrimination on grounds of sex or religion;

WHEREAS the personal law currently applicable to Hindus in Bangladesh is derived from ancient texts and colonial judicial interpretations that have not been reformed since independence and that fail to meet the constitutional and international human rights standards to which Bangladesh is committed;

WHEREAS the reform of Hindu personal law is demanded both by the constitutional principles of equality and dignity and by the deepest values of the Hindu tradition itself, which require a Dharmic legal order in which all persons are treated with equal justice;

WHEREAS the Hindu community in Bangladesh has consistently expressed through its representative organizations the demand for a modern, codified, and non-discriminatory personal law;

NOW THEREFORE it is enacted as follows.

7.2 Marriage Provisions

Part II of the model Act should address Hindu marriage and its dissolution. The provisions proposed are as follows.

Section 1: Every Hindu marriage solemnized after the commencement of this Act shall be subject to the provisions of this Act.

Section 2: For a valid Hindu marriage, the following conditions must be fulfilled. First, neither party should have a living spouse at the time of the marriage. Second, the bridegroom should be of not less than 21 years of age and the bride should be of not less than 18 years of age. Third, the parties should not be within the degrees of prohibited relationship as specified in the Schedule, unless the custom or usage governing each of them permits of a marriage between the two. Fourth, the marriage should be performed with the free and full consent of both parties without any force, fraud, or undue influence.

Section 3: Every Hindu marriage must be registered in accordance with the provisions of this Act. Registration must be completed within 90 days of the solemnization of the marriage. Failure to register the marriage shall not invalidate it but shall constitute an offence punishable with a fine as prescribed.

Section 4: A Hindu marriage may be dissolved by a decree of divorce by a competent court on any of the following grounds. The respondent has had voluntary sexual intercourse with any person other than his or her spouse after the solemnization of the marriage. The respondent has treated the petitioner with cruelty. The respondent has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition. The respondent has been of unsound mind or has been suffering from a mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent. The respondent has ceased to be a Hindu by conversion to another religion. The respondent has been suffering from a virulent and incurable form of leprosy or any other communicable disease specified by the government. The respondent has renounced the world by entering any religious order. The respondent has not been heard of as being alive for a period of seven years or more. The parties have been living separately for a continuous period of two years and have mutually consented to the dissolution of the marriage and have not been able to reconcile.

Section 5: A Hindu wife shall also be entitled to dissolution of marriage if the husband, after the solemnization of the first marriage, has married again or if the husband has been guilty of rape, sodomy, or bestiality.

Section 6: The court may grant a decree for judicial separation either on a petition of the husband or on a petition of the wife on any of the grounds specified in Section 4, provided that the parties shall not be bound to cohabit together while the decree of judicial separation remains in force.

Section 7: Either party to a marriage may present a petition to the Family Court for restitution of conjugal rights on the ground that the other party has without reasonable excuse withdrawn from the society of the petitioner. The court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly. Provided that no such decree shall be enforced in a manner inconsistent with the constitutional right to personal liberty and bodily integrity.

Section 8: On a petition for divorce or judicial separation, the court may make such provisions as it thinks just and proper with respect to the custody, maintenance, and education of the minor children whose welfare shall in all cases be the paramount consideration.

Section 9: On the dissolution of a Hindu marriage, the court may, by way of alimony, award to the petitioner or the respondent a gross sum or monthly sum for a term not exceeding the life of the applicant, as the court thinks reasonable, having regard to the respondent's income and property and the income and property of the applicant, the conduct of the parties and other circumstances of the case.

7.3 Succession and Inheritance Provisions

Part III of the model Act should address Hindu succession, establishing equal inheritance rights for all heirs regardless of gender.

Section 20: This Part applies to the intestate succession to the property of a Hindu who dies after the commencement of this Act.

Section 21: Property of a Hindu intestate shall devolve according to the provisions of this Part. The heirs shall succeed to the property of the intestate in the following order of priority: Class I heirs, Class II heirs, agnates of the deceased, and cognates of the deceased.

Section 22: Class I heirs shall comprise: son, daughter, widow, mother, son of a predeceased son, daughter of a predeceased son, son of a predeceased daughter, daughter of a predeceased daughter, widow of a predeceased son, son of a predeceased son of a predeceased son, daughter of a predeceased son of a predeceased son, and widow of a predeceased son of a predeceased son.

Section 23: Among Class I heirs, the widow or widower and the children of the intestate shall each take an equal share of the property.

Section 24: Every heir in Class I and Class II shall inherit as an absolute owner and shall have full power to deal with the inherited property in any manner, including sale, mortgage, gift, and testamentary disposition. The concept of the limited estate is hereby abolished.

Section 25: No reversioner shall have any right to challenge any act of any heir in respect of inherited property on the ground that the heir is a widow, daughter, or other female heir.

Section 26: Daughters shall be entitled to an equal share of any joint family property, and shall be deemed to be coparceners with the same rights as sons in any joint family or undivided family property. A daughter shall be entitled to seek partition of such property and to receive her share on partition.

Section 27: Any Hindu of sound mind and not a minor may dispose of his or her property by will. A will shall be governed by the provisions of the Succession Act 1925 as applicable to Hindus.

Section 28: On the death of a Hindu male intestate, the widow of the intestate shall have the same rights to and interest in the property of the intestate as the son of the intestate.

Section 29: A child who has been legally adopted under the provisions of this Act or under any law for the time being in force shall have the same rights of succession and inheritance as a biological child of the adopter.

7.4 Guardianship and Custody Provisions

Part IV of the model Act should address guardianship of minor children of Hindu parents.

Section 40: For the purposes of this Part, the natural guardians of a Hindu minor are, in the case of a boy or an unmarried girl, the father and the mother equally; and in the case of an illegitimate boy or an illegitimate unmarried girl, the mother, and after her, the father.

Section 41: The natural guardianship of a Hindu minor vests equally in both parents. Neither parent is entitled to act as guardian to the exclusion of the other. In case of disagreement between the parents, either parent may apply to the Family Court for an order determining the exercise of guardianship rights in the best interests of the child.

Section 42: After the death of one parent, the surviving parent shall be the sole natural guardian of the minor.

Section 43: In all proceedings concerning the custody, guardianship, or welfare of a Hindu minor, the paramount consideration shall be the welfare and best interests of the child, including the child's physical, emotional, intellectual, and cultural development.

Section 44: In determining the best interests of the child, the court shall have regard to, among other factors: the child's established attachment relationships and the likely effect of any disruption to those relationships; the child's own wishes, ascertained in a manner appropriate to the child's age and maturity; each parent's ability to meet the child's needs; any evidence of domestic violence or child abuse; the importance of maintaining the child's relationship with both parents where it is safe to do so; and the child's cultural, religious, and educational needs.

7.5 Adoption Provisions

Part V of the model Act should provide a modern statutory framework for Hindu adoption.

Section 50: A Hindu male or female of sound mind and not a minor, and a Hindu couple jointly, may take a son or daughter in adoption subject to the provisions of this Part.

Section 51: The following conditions must be fulfilled for a valid adoption: the person adopting must have the capacity to take in adoption; the person giving in adoption must have the right to give in adoption; the person adopted must be capable of being taken in adoption; the adoption must be made in compliance with the provisions of this Part.

Section 52: Any minor Hindu male or female child who has not been adopted previously may be adopted. The Act specifically abolishes any requirement that the adoptee be male, any restriction based on caste, and any age restriction beyond the general requirement of minority.

Section 53: An adoption may be made by a Hindu male or female, whether married or unmarried. A married person shall not adopt except with the consent of the spouse unless the spouse has completely and finally renounced the world, or has ceased to be a Hindu, or has been declared by a court of competent jurisdiction to be of unsound mind.

Section 54: A Hindu may give in adoption any child for whose adoption the Hindu is legally empowered to give consent. No child shall be given in adoption to any person if the child has a parent or guardian who is able and willing to care for the child, unless such parent or guardian has given written consent to the adoption.

Section 55: An adoption which is not consistent with the provisions of this Part shall be void and no person shall be recognized as having been adopted unless the adoption is made and proved in accordance with the provisions of this Part.

Section 56: An adoption of a son or daughter does not deprive the adopted child of the right to inherit the property of his or her natural parents, except where the natural parents' property has been already inherited by others at the time of the adoption.

CHAPTER EIGHT: ADDRESSING THE OBJECTIONS: A FINAL ENGAGEMENT WITH CONSERVATIVE ARGUMENTS

8.1 The Theological Objection: Dharma and the Sanctity of Tradition

The most fundamental objection to Hindu personal law reform from within the conservative Hindu tradition is theological: the argument that the rules of Hindu personal law, including the rules that discriminate against women, are expressions of Dharma, the cosmic normative order, and that to reform them is to violate the Dharmic order and invite the consequences that Dharma violation produces.

The response to this argument, fully developed, requires engagement with the theological foundations of the objection rather than simply dismissing it as obscurantism. The theological response proceeds as follows. The concept of Dharma, as established in Part One and developed throughout this treatise, is not static but dynamic. The Dharmasastra tradition itself recognizes that the application of Dharmic principles must be adapted to the circumstances of time, place, and age. The principle of kala-desa-patra, the adaptation of Dharma to time, place, and circumstance, is not an external imposition on the tradition but an internal feature of it. The Dharmasastra jurists of every generation understood themselves as engaged in the ongoing work of Dharmic interpretation and adaptation, not merely in the mechanical application of fixed rules.

The current age, the Kaliyuga, is one in which the Dharmasastra tradition itself acknowledges that many of the practices appropriate to earlier ages are no longer available or appropriate. The practical application of this principle to the question of gender discrimination in personal law is that the rules which were appropriate in the specific social conditions of medieval Bengal, where women's dependence on male family members was both social reality and social norm, are no longer appropriate in conditions where women work, vote, run businesses, serve as judges and lawyers, and are constitutionally guaranteed equal rights. A genuinely Dharmic response to the changed conditions of the modern age is not to insist on the mechanical application of rules

derived from conditions that no longer exist but to ask what Dharmic justice requires in the conditions that actually prevail.

The deepest Dharmic value, the value that underlies all the specific rules of the Dharmasastra tradition, is the value of Satya, truth, and Nyaya, justice. A legal system that perpetuates manifest injustice against millions of women cannot be characterized as Dharmic without betraying the very concept of Dharma it claims to uphold.

8.2 The Stability Argument: Reform and the Risk of Community Disruption

A second conservative argument is more sociological than theological: the argument that the existing rules of Hindu personal law, whatever their deficiencies, provide a stable framework for family and community life, and that reform carries the risk of disrupting that stability and creating social conflict and uncertainty.

The response to this argument begins with a factual challenge: the existing rules are not stable. They are applied inconsistently, they are frequently unknown to the people they are supposed to govern, they produce outcomes that are contested and litigated at enormous social and financial cost, and they are the subject of continuous community debate and informal circumvention. The argument for the stability of the status quo is an argument for the stability of injustice, which is a form of stability that a constitutional democracy cannot defend.

The historical evidence from India is that reform of Hindu personal law, while it produced short-term contestation and required political courage to implement, did not disrupt Hindu community life but rather strengthened it by providing clear, accessible, and fair rules that people could actually rely on. The stability that follows from a clear, codified, and just legal framework is far more genuine and more durable than the pseudo-stability of an unjust uncodified system that is maintained only by the political disempowerment of those it disadvantages.

8.3 The Cultural Imperialism Argument: Reform as External Imposition

A third objection frames the reform project as an instance of cultural imperialism: the imposition of Western or secular values on a non-Western religious community by forces that do not understand or respect that community's own values and traditions.

This argument requires a threefold response. First, the demand for reform comes primarily from within the Hindu community itself, from Hindu women's organizations, from progressive Hindu scholars and theologians, and from the younger generation of the Hindu community who live under the discriminatory rules and experience their injustice directly. This is not an externally imposed agenda but an internally generated demand for justice.

Second, the values of equality and dignity that the reform seeks to realize are not Western values. They are universal human values that are recognized and affirmed in every major religious and philosophical tradition, including the Hindu tradition. The argument that gender equality is a Western value that the Hindu tradition cannot accommodate is empirically false: the Hindu

tradition contains rich resources for the affirmation of women's equal dignity and equal worth, from the shakti theology that recognizes feminine divine power as foundational to reality, to the philosophical tradition of the Upanishads in which women appear as learned interlocutors, to the social reform movements of the nineteenth and twentieth centuries in which Hindu thinkers from Ram Mohan Roy to Vivekananda advocated for the reform of practices that discriminated against women.

Third, the specific reforms proposed, equal inheritance rights, divorce, equal guardianship, are not radical impositions on the Hindu community. They are reforms that every other Hindu community in the world, including the Hindu majority community in India, has already accepted and internalized. To characterize these as alien impositions on Bangladesh's Hindu community is to suggest that Bangladesh's Hindus are uniquely and permanently unsuited to the standards of justice that their coreligionists everywhere else have embraced.

8.4 The Minority Vulnerability Argument: Reform as a Threat to Community Security

Perhaps the most politically resonant of the conservative arguments against reform is the argument from minority vulnerability: the argument that, in the current climate of communal tension and anti-Hindu violence, the Hindu community cannot afford the internal divisions that would be created by pushing for controversial personal law reforms, and that the community's energy and political capital should be devoted to protecting itself from external threats rather than to internal reform debates.

The response to this argument, while acknowledging the genuine and serious security concerns of Bangladesh's Hindu community, must insist on the connection between legal security and physical security that has been demonstrated throughout this treatise. The economic vulnerability of Hindu women under the current personal law regime is directly related to the community's overall vulnerability to dispossession and violence. When Hindu widows have no inheritance rights and are economically dependent on male relatives or on the mercy of the community, they are more vulnerable to the kind of property-grabbing violence that has historically accompanied communal conflict in Bangladesh. When Hindu women can be driven out of their family homes by claiming that they have no legal right to the property, the entire community's economic foundation is weakened.

The strongest and most durable protection against external threats is a community in which every member, including its women, enjoys the full protection of the law and the full economic security that equal legal rights provide. A community that denies its own women their legal rights in the name of community solidarity is a community that has accepted a form of internal injustice as the price of a false security, and that false security will not protect it when the next wave of communal violence arrives.

CHAPTER NINE: THE REFORM MOMENT OF 2026 AND BEYOND

9.1 The Normative and Empirical Convergence

This treatise has, throughout its sixteen Parts, attempted to demonstrate a convergence between the normative argument for reform, the argument from constitutional principle, international human rights law, jurisprudential philosophy, and the deepest values of the Hindu tradition itself, and the empirical circumstances of Bangladesh in 2026, circumstances that create a political opportunity for comprehensive reform that may not recur if it is not seized.

The normative argument for reform is, as this synthesis has restated, overwhelming. There is no credible constitutional, jurisprudential, philosophical, theological, or practical argument for maintaining the existing system of discriminatory Hindu personal law in Bangladesh that withstands critical examination. Every genuine engagement with the question, from the standpoint of Dharmic philosophy, natural law, liberal rights theory, transformative constitutionalism, postcolonial jurisprudence, feminist legal theory, comparative law, or international human rights law, arrives at the same conclusion: the current system is unjust, and its reform is obligatory.

The empirical argument for reform in 2026 rests on the specific features of the current political moment: the constitutional reform process initiated by the interim government, the Women's Affairs Reform Commission's endorsement of the principle of equal inheritance rights, the High Court's 2023 order inviting constitutional challenge to the deprivation of Hindu women's rights, the unprecedented international attention to the situation of Bangladesh's Hindu minority following the August 2024 violence, the mobilization of the diaspora, the engagement of international human rights institutions, and the presence at the head of the government of a Nobel laureate with significant international standing and an expressed commitment to democratic and rights-based governance.

This convergence of normative argument and empirical opportunity is rare. It does not guarantee that reform will be achieved; political opportunity is necessary but not sufficient, and the forces of resistance are real and powerful. But it creates a set of conditions in which comprehensive reform is more achievable than it has ever been in the history of independent Bangladesh.

9.2 The Role of Muhammad Yunus and the Interim Government

The government of Muhammad Yunus represents a specific and time-limited opportunity for reform. Yunus's international credibility, his track record in human empowerment through the Grameen Bank model, and his stated commitment to building a more just and equal Bangladesh provide potential political cover for a government that chooses to initiate Hindu personal law reform. Unlike any previous Bangladeshi government, the Yunus administration is not tied to the political calculations that have led successive governments to avoid the politically sensitive question of minority personal law reform.

At the same time, the Yunus government is constrained by the political forces that have mobilized around it since August 2024, including the Islamist movements that have shown their capacity for mass mobilization in opposition to gender equality reforms. The political

management of those constraints, in a way that allows the government to move forward on the genuinely achievable components of the reform program, requires both political courage and political skill.

The most politically achievable component of the reform program in the current moment is the enactment of a Hindu Marriage Act that provides for divorce, codifies the conditions of valid marriage, makes marriage registration mandatory, and establishes equal maintenance rights. This reform is achievable for several reasons: it affects primarily the internal affairs of the Hindu community and therefore does not directly engage the mobilization capacity of the Islamist movement; it addresses the most acute and most clearly documented injustice of the current system, the absence of any divorce right; it has already been accomplished in India for over sixty years and is therefore not a novel or untested policy; and it commands broad support among the educated and the younger members of the Hindu community as well as among civil society organizations and human rights advocates.

The enactment of a Hindu Marriage Act could be followed, within a reasonable timeframe, by the enactment of a Hindu Succession Act and a Hindu Guardianship Act, completing the comprehensive codification of reformed Hindu personal law. The sequencing of these reforms, the determination of which to pursue first and which to build toward, is a matter of political strategy that must be determined by those working in the domestic political arena with full knowledge of the current political conditions.

9.3 The Next Decade: A Realistic Assessment

Comprehensive Hindu personal law reform in Bangladesh is unlikely to be achieved through a single legislative act in a single political season. The forces of resistance are real, the political will required is difficult to sustain, and the organizational work of building the reform coalition, drafting the legislation, and managing the political process takes time. A realistic assessment of the timeline suggests that comprehensive reform is more likely to be achieved over the course of a decade than in a single term of government.

What is achievable in the shorter term, within the constitutional moment created by the post-August 2024 political transformation, is the initiation of the reform process: the filing of the comprehensive constitutional PIL, the engagement of the reform commissions with the specific demands of Hindu personal law reform, the enactment of an initial statute addressing the most urgent injustice of the absence of divorce rights, and the formal commitment of the government to a timetable for comprehensive codification.

What is achievable in the medium term, over the course of three to five years, is the completion of the core legislative program: the enactment of the Hindu Marriage Act, the Hindu Succession Act, the Hindu Guardianship Act, and the Hindu Maintenance Act, together with the necessary procedural provisions for their implementation through the Family Courts.

What is achievable in the longer term, over the course of a decade or more, is the transformation not merely of the formal law but of the social practices and institutional cultures that determine

whether the reformed law is actually implemented in the lives of Hindu women in Bangladesh. The experience of India's Hindu law reform, which required decades of cultural change and legal advocacy after the initial legislative enactment before the reforms were genuinely integrated into everyday social practice, counsels realism about the gap between legislative reform and actual transformation of lived experience.

CHAPTER TEN: CONCLUDING REFLECTIONS: ON LAW, JUSTICE, AND THE HUMAN IMPERATIVE OF REFORM

10.1 On the Nature of Legal Justice

This treatise has covered an enormous amount of ground, from the philosophical foundations of the Dharmasastra tradition to the specific provisions of a model Hindu Marriage Act, from the colonial construction of Hindu law in Bengal to the contemporary jurisprudence of the Bangladesh Supreme Court, from the sociology of the Hindu community to the mechanics of the Universal Periodic Review. It has done so in the conviction that law is not merely a technical instrument but a moral practice, that legal scholarship is not merely academic exercise but a form of engaged participation in the ongoing human project of realizing justice.

The philosophy of law that informs this treatise is one that takes seriously both the traditions of the past and the demands of the present, both the internal resources of the Hindu legal tradition and the external standards of international human rights law, both the practical constraints of politics and the unconditional demands of justice. It is a philosophy that refuses the false choice between tradition and transformation, insisting instead that genuine transformation is always, at its best, a deepening of tradition: a recovery of what is most essential and most valuable in a tradition, purified of the historical contingencies and the power arrangements that have attached themselves to it over time.

The reform of Hindu personal law in Bangladesh is, on this understanding, not an attack on Hindu tradition but an act of fidelity to it. It is the recovery, from beneath the layers of colonial distortion and the calcifications of institutional inertia, of the Dharmic commitment to justice that is the deepest and most authentic expression of the Hindu legal tradition's aspiration.

10.2 On the Urgency of the Human Situation

Philosophy aside, there is a dimension of this treatise that is simply human, that is about specific lives, specific suffering, and specific deprivations that are real and present and urgent. There is the Hindu widow in Khulna whose husband's brothers are moving to evict her from her marital home on the day of his funeral, relying on the Dayabhaga rules that give her only a limited estate in his property. There is the Hindu woman in Sylhet who has been living for twelve years in a marriage of sustained cruelty and abuse, who cannot obtain a divorce because no such right exists in her law, who cannot leave because she has nowhere to go and no independent economic means to support herself and her children. There is the Hindu daughter in Dhaka who has been

told by her male relatives that she is not entitled to her share of her deceased father's property because custom says that property passes to sons, and who discovers that the formal law, ancient as it is and badly drafted as it often is, is both inadequate to protect her and inaccessible to her because she does not know its content and cannot afford a lawyer.

Each of these situations is not a hypothetical example but a description of the real circumstances that the absence of Hindu personal law reform creates. Each of them represents a human being whose dignity is being violated, whose rights are being denied, and whose suffering is being perpetuated by the failure of the Bangladesh state to do what every basic principle of justice, constitutional or religious, domestic or international, requires it to do.

This treatise is ultimately written for these people. It is written for the widow fighting for her right to remain in her own home. It is written for the woman imprisoned in a marriage that cannot be dissolved. It is written for the daughter denied her inheritance. It is written in the conviction that the intellectual work of developing the legal arguments, tracing the historical background, demonstrating the constitutional case, and designing the legislative solutions is not peripheral to the project of justice for these women but is an essential part of it: because it is not enough to know that an injustice exists if one cannot articulate precisely what the injustice is, where it comes from, what corrects it, and how the correction can be achieved.

10.3 On the Responsibility of Those Who Know

The final reflection of this treatise is addressed to a specific audience: those who have read it and who now know, in the detail that fifteen preceding Parts have provided, the full dimensions of the legal situation of Hindu women in Bangladesh. Knowledge creates responsibility. Those who know what the Dayabhaga system does to the inheritance rights of Hindu widows and daughters, who know what the absence of divorce rights does to the lives of Hindu women in failed or abusive marriages, who know that Bangladesh's constitution prohibits the discrimination that the uncodified Hindu personal law perpetuates, who know that India accomplished comprehensive reform of this same legal system over sixty years ago, who know that Bangladesh has undertaken international obligations that require it to eliminate this discrimination, who know all of this and do nothing, are participants in the perpetuation of the injustice rather than merely bystanders to it.

The responsibility of knowledge is not equally distributed. It falls most heavily on those who have the greatest capacity to act: the lawyers and judges who work in the courts where these cases are decided, the legislators and government officials who have the power to enact reform, the civil society leaders and academics who shape the intellectual landscape in which reform advocacy takes place, the diaspora community members who have the resources and the international standing to amplify the domestic reform movement. But it also falls, in some measure, on every person who reads these pages, regardless of their professional capacity or their geographic location, because the injustice documented here is a human injustice, and every human being who knows of an injustice and has any capacity to respond to it bears some responsibility for that response.

The aspiration of this treatise has been to make the case for reform as complete, as rigorous, and as persuasive as the limits of scholarly capacity permit. The achievement of reform, the translation of the argument of these pages into the living reality of a changed legal order that protects the dignity and equality of Bangladesh's Hindu women, is a task that requires more than scholarship. It requires political courage, organizational capacity, community leadership, and the kind of sustained moral commitment that does not give up when the first effort fails. This treatise cannot provide those things, but it can provide the intellectual architecture on which those who do provide them can build. That is the contribution it has attempted to make.

The work of reform is never finished. But it must begin.

CONCLUSION TO PART SIXTEEN AND TO THE TREATISE AS A WHOLE

Part Sixteen has brought to completion the analytical project that the treatise set out to accomplish. It has synthesized the philosophical argument from Part One through the political analysis of the current moment, developed the constitutional argument to its fullest form, proposed a specific and detailed legislative blueprint for reform, addressed the major conservative objections, assessed the realistic prospects for reform in the current political landscape, and concluded with a reflection on the human urgency and the moral stakes of the reform project.

The treatise has demonstrated, across sixteen Parts and well over a quarter million words, that the reform of Hindu personal law in Bangladesh is simultaneously: a philosophical imperative derived from the deepest values of the Hindu tradition itself; a constitutional obligation derived from Bangladesh's own supreme law; an international legal obligation derived from the treaties that Bangladesh has freely ratified; a comparative legal requirement demonstrated by the experience of every comparable jurisdiction in the world; a practical necessity for the welfare and security of the Hindu community; and above all, a human imperative demanded by the simple and irreducible fact that there are real human beings, millions of them, whose lives are constrained, diminished, and in some cases destroyed by the failure of the Bangladesh state to modernize the laws that govern them.

The reform that this treatise has advocated is not radical; it is moderate. It does not propose the abolition of Hindu personal law but its reform and codification. It does not demand the imposition of a uniform secular civil code but the modernization of a community's own law. It does not ask Bangladesh to go beyond what its immediate neighbors have already accomplished but only to catch up with them. The modesty of the demand makes its continued non-fulfillment all the more extraordinary and all the more inexcusable.

The final word of this treatise belongs not to a jurist or a philosopher or a constitutional theorist but to the tradition itself. The Mahabharata, in the Shantiparva, the Book of Peace, contains a formulation of Dharma that is at once the most ancient and the most modern statement of the principle that should govern any law that claims to be just: "Do not do to another what you

would not wish done to yourself." This principle, the golden rule of Dharmic ethics, is the foundation on which the entire argument for Hindu personal law reform in Bangladesh rests. No man who would not wish to be denied the right to dispose of his property, to dissolve a failed marriage, or to maintain his relationship with his children should be comfortable with a legal system that denies those rights to women. No society that aspires to justice can defend a legal order built on such a denial.

The ancient principle is clear. The constitutional argument is compelling. The international obligation is real. The comparative path is proven. The political moment is present.

The time for reform is now.

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This treatise, sixteen Parts comprising the complete analytical examination of Hindu personal law in Bangladesh from its philosophical foundations to its reform prospects, concludes here. It has been written in the conviction that the human beings whose rights are governed by this law deserve the best possible engagement of the legal mind with the injustices they face, the philosophical resources available to address those injustices, and the practical strategies through which legal reform can be achieved. The work of reform is not finished. But the intellectual architecture for that work is now as complete as the present state of legal knowledge and political analysis permits.

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Biography of Author

S M Nazmuz Sakib, CMSA®, FPWMP®, FTIP®, BIDA®, FMVA®, CBCA® is a Fellow at the Scholars Academic and Scientific Society, Member of International Association of Engineers - IAENG, a Bangladeshi Arena Grand Master (AGM) in FIDE (International Chess Federation), and a lifetime member of the Bangladesh English Language Teachers Association (BELTA). His educational journey began with the Primary School Certificate (PSC) from Cotton Research Station School in Sreepur, Gazipur, after which he studied Class 6 at Alhaz Dhanai Bepari Memorial (ADBM) High School in Sreepur before relocating to Jashore. He completed his Junior School Certificate (JSC) from Jagodishpur Mirzapur Ismail Secondary School in Jagodishpur, Chowgacha, Jashore, and his Secondary School Certificate (SSC) from A.K. High School and College, Dhania, Dhaka. He obtained his Higher Secondary Certificate (HSC) from Chowgacha Government College in Chowgacha, Jashore. Engr. Sakib holds a Bachelor of Science in Business Studies (BSc) from the School of Business and Trade, an online business school in Switzerland, awarded in 2021 with a CGPA of 4.0 out of 4.0 (1st Class, 1st) and 97.06% marks. He also completed his Master of Business Administration (MBA) in Human Resources in 2023 from the International MBA Institute, an online business school in Switzerland. In addition, Dr. Sakib pursued a Bachelor of Laws (Honors) (LLB) at Dhaka International University, Dhaka, Bangladesh, graduating in 2023 with a CGPA of 3.31 out of 4, and a Bachelor of Engineering in Information Technology from Harris University in Liverpool, UK, in 2024 with a CGPA of 3.75 out of 4. He earned his Doctor of Business Administration (DBA) from Atlanta College of Liberal Arts and Sciences in 2025, graduating with A+ (Distinction). Dr. Sakib got various Professional Certifications i.e. Unilever Digital Marketing Analyst, Unilever; AWS Cloud Solutions Architect, Amazon Web Services; Microsoft UX Design, Microsoft; Liberty Mutual Insurance Sales Agent, Liberty Mutual Insurance; Microsoft UX Design, Microsoft; Keller Williams Real Estate Agent, Keller Williams Realty, Inc.; HRCI Human Resource Associate, HRCI; SAS Statistical Business Analyst, SAS Education; Google Project Management, Google; Google Business Intelligence, Google; Google Digital Marketing and E-Commerce, Google; Google IT Support, Google; Google Data Analytics, Google; SAS Visual Business Analytics, SAS Education; Meta Social Media Marketing, Meta; Tally Bookkeeper, Tally BookkeeperTally Education Private Limited (TEPL); Strategy and Finance for the lifecycle of a Social Business, Yunus Social Business; Sustainability Analyst Fundamentals, Arizona State University; PepsiCo: Water Stewardship, PepsiCo; Business and Marketing Strategies, University of London; Data Exploration in Psychology, American Psychological Association & PsycLearn; American Politics, Foreign Policy, and US-India Ties, O.P. Jindal Global University; Modern and Contemporary Art and Design, MoMA The Museum of Modern Art; Digital Health, Imperial College London; Advanced Digital Transformation, IIM Ahmedabad; Qualitative Research Design and Methods for Public Health, Emory University; Qualitative Research Methods in Psychology, American Psychological Association &

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HINDU PERSONAL LAW IN BANGLADESH

This Pnarhar argumennt, Hindu personal law in Bangladesh, governing 13 million citizens. Habeen frozen in its colonial form since 1971.

The Dayabhaga system denies women equal inheritance (granting only a limited life estate); provides no divorce ,restricts adoption to males,, subbridiatine mothers in guardianship, and perpentates caste discrimina-nitation io the waild exposee constitutional violations under Articles 27 and 28, contrasts India and Nepal'is relgpns, and analyzee the Vested Property Acts Oisposipible of Hindu land.

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Proposed Reforms include equal inheritance for daughters; absolute ownership for widows, Divorce rights; compuisory marriage registaa-equal guardianship for mothers, and abolution of caste restrictions, appibee in grenening ioit euiaP souce on reclules, but as fidelity to Dharma's impretive.

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